

# **Argonne National Laboratory**

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## **Guide to Exporting**

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**Revised:  
April 2000**



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# Section 1

## Argonne National Laboratory and Export Control

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### 1.1 Introduction

The Laboratory has prepared this guide to explain Laboratory export/import policies and to help you prepare documentation and materials for export from, or import to, the Laboratory. The purpose of the guide is to help you understand the “whys and whats” of export control so that you can better tap the expertise of Laboratory staff trained in export control. Because export regulations are complex, Laboratory employees are not expected to become experts in export controls, but you should use the expertise available at the Laboratory.

Frequently used definitions, abbreviations, and other terms used in the guide are provided in Exhibit A.

### 1.2 Argonne National Laboratory’s Mission and Export Control Policy

#### 1.2.1 Mission

Argonne is a large, multiprogram laboratory operated by The University of Chicago for the U.S. Department of Energy (DOE). The Laboratory’s mission is basic research and technology development to meet national goals in scientific leadership, energy technology, environmental quality, and national security. Major mission areas include (1) fundamental science and research, (2) national research/user facilities, (3) energy research and technologies, (4) environmental research and technologies, (5) national security assistance, and (6) mission-related technical evaluations. Additional goals pervading all Argonne missions include the transfer of technology to the private sector, protection of the environment and the health and safety of Argonne workers and the public, and science and mathematics education for students and teachers.

Although a predominant portion of the Laboratory’s mission is related to fundamental research and the communication of announced and developed technologies, which, in general, is *excepted* from export control regulations, the Laboratory also has an obligation to assure that particular technologies, equipment, and information subject to export control regulations are exported in compliance with these regulations (in some instances, this means that exports cannot be made to certain foreign nationals\* and/or countries [see Exhibit B]).

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\* The term “foreign national,” used throughout the regulations and this document, refers to personnel who are not currently U.S. citizens and do not currently hold a “green card.” (In general, foreign citizens employed by or working at the Laboratory hold “green cards.”) The term is used in this document only to ensure consistency with the terminology used in the export control regulations.



***Fundamental research** is defined as basic and applied research in science and engineering, the information resulting from which is ordinarily published and shared broadly within the scientific community. Fundamental research can be distinguished from proprietary research and from industrial development, design, production, and product utilization in that the results of the latter are ordinarily restricted for proprietary or national security reasons. **Publication and export of fundamental research, in general, continues to be encouraged and is not inhibited or prohibited by export control regulations or the corresponding Laboratory policy defined in Section 1.2.3.** The Laboratory has established an export control policy and associated processes to ensure that it complies with the law and regulations that control the export of sensitive technologies, equipment, and information.*

## **1.2.2 Export Control Policy Preamble**

Although much of the work Argonne and its employees undertake to further its research and technology development mission is excepted from U.S. export control regulations, Export Administration Regulations (EAR) may apply to other activities in which employees of the Laboratory are engaged. Fundamental research, as defined in Section 1.2.1, does not fall under the control of the EAR.

An “export” is the actual shipment or transmission of items subject to the EAR out of the United States or the release of technology or software subject to the EAR to a foreign national in the United States. In addition, information that Laboratory staff pass on to a foreign national visiting the United States — or information that Laboratory staff pass on to a foreign national while overseas — may also be covered by export-control regulations. Exports may include commodities, software/computer coding, and/or technical data from the United States transferred by mail, telephone, electronic mail, or facsimile; through shipment; via hand-carried materials; as a result of presentations; over the web; and/or by any other means.

All laboratory staff therefore must be aware that providing, purposely or inadvertently, export-controlled commodities or information to foreign nationals without the appropriate clearances or licenses violates the EAR.

## **1.2.3 Export Control Policy**

Argonne is firmly committed to strict adherence to all U.S. export control laws and regulations. Under no circumstances should the export of EAR-controlled technical data, software, or commodities take place contrary to U.S. export control laws and regulations. In addition, the Laboratory also follows DOE policy and executive orders, and these orders agree with the export control laws and regulations. Sponsorship of Laboratory operations/functions by DOE does not mitigate, supersede, or remove the Laboratory’s responsibility to adhere to U.S. export control laws and regulations.





Administrative, civil, and criminal penalties exist for violations of export control laws and may be imposed against the Laboratory and/or individual employees. Because of potential serious consequences associated with failing to comply with U.S. export control laws and regulations, all employees need to be aware of their obligations for full compliance.

## **1.3 Export Control Resources Available to the Laboratory Community**

### **1.3.1 Export Control Coordinator and Export Control Liaison**

The Laboratory has designated a primary point of contact, at both Argonne-East and Argonne-West, to help you with export control issues. The Export Control Coordinator at Argonne-East (2-2701) — or the Export Control Liaison at Argonne-West (3-7495) — can help you navigate through the export control papers and process, as well as arrange for the expertise to make exporting as easy as possible.

As noted in Section 1.3.2, Laboratory staff with specific export control knowledge are also available to help you. If you can identify or categorize the export of concern into one of the areas of responsibility identified in Section 1.3.2, please contact the responsible organization (you can find the names of responsible staff members on the Export Control web page, which is accessible via the Argonne home page: <http://www.anl.gov>). If you cannot categorize the concern or have a general question about export controls, contact the Export Control Coordinator (Argonne-East) on extension 2-2701 or the Export Control Liaison (Argonne-West) on extension 3-7495.

### **1.3.2 Other Sources of Assistance**

You can obtain a list of the Laboratory organizations that possess technically and administratively qualified personnel to assist employees in assuring export compliance through the Export Control web page. Questions for specific areas should be directed to the staff who are identified on the web page. Figures 1a and 1b illustrate the export control functions of Argonne staff and related organizations.

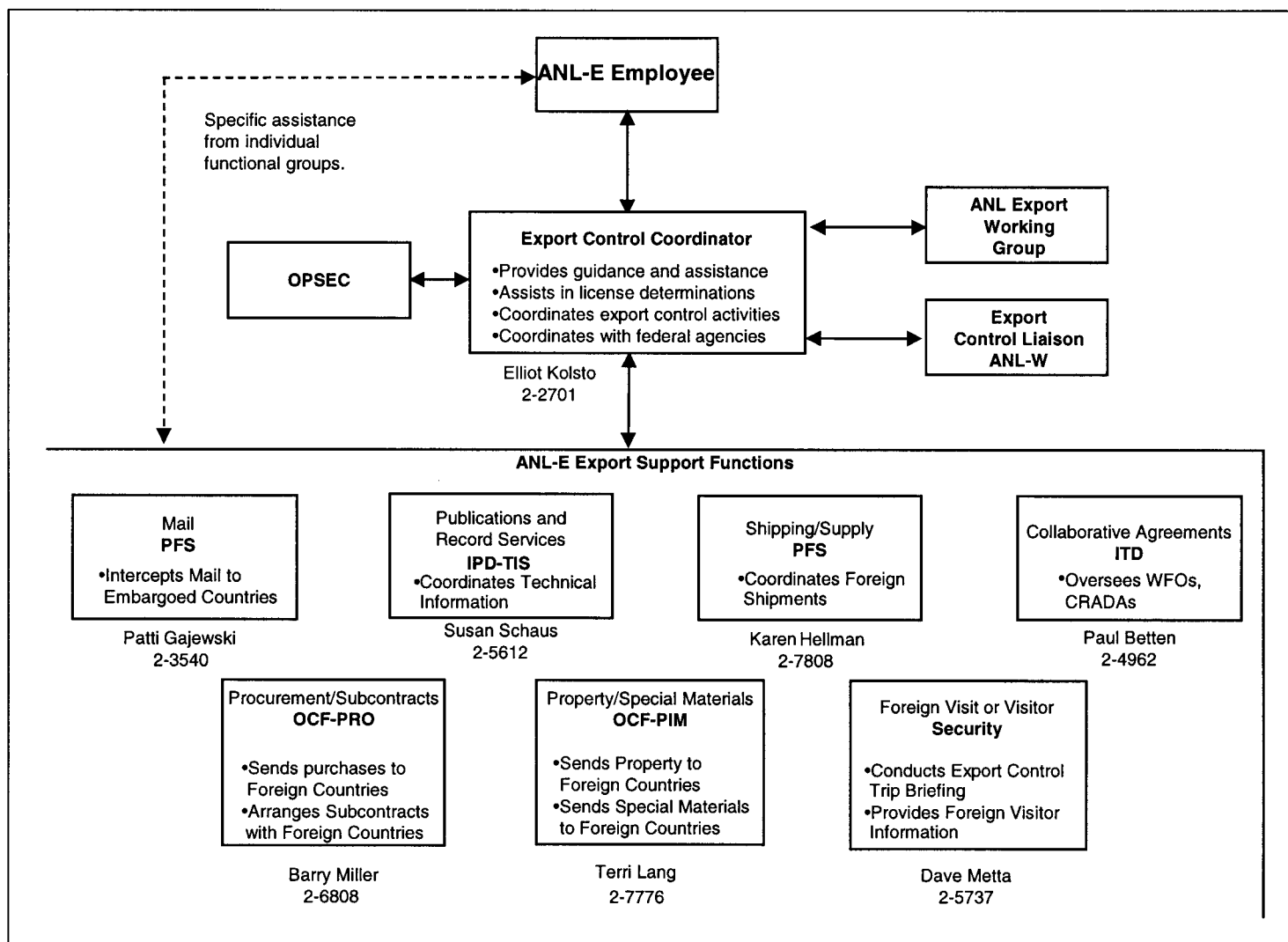
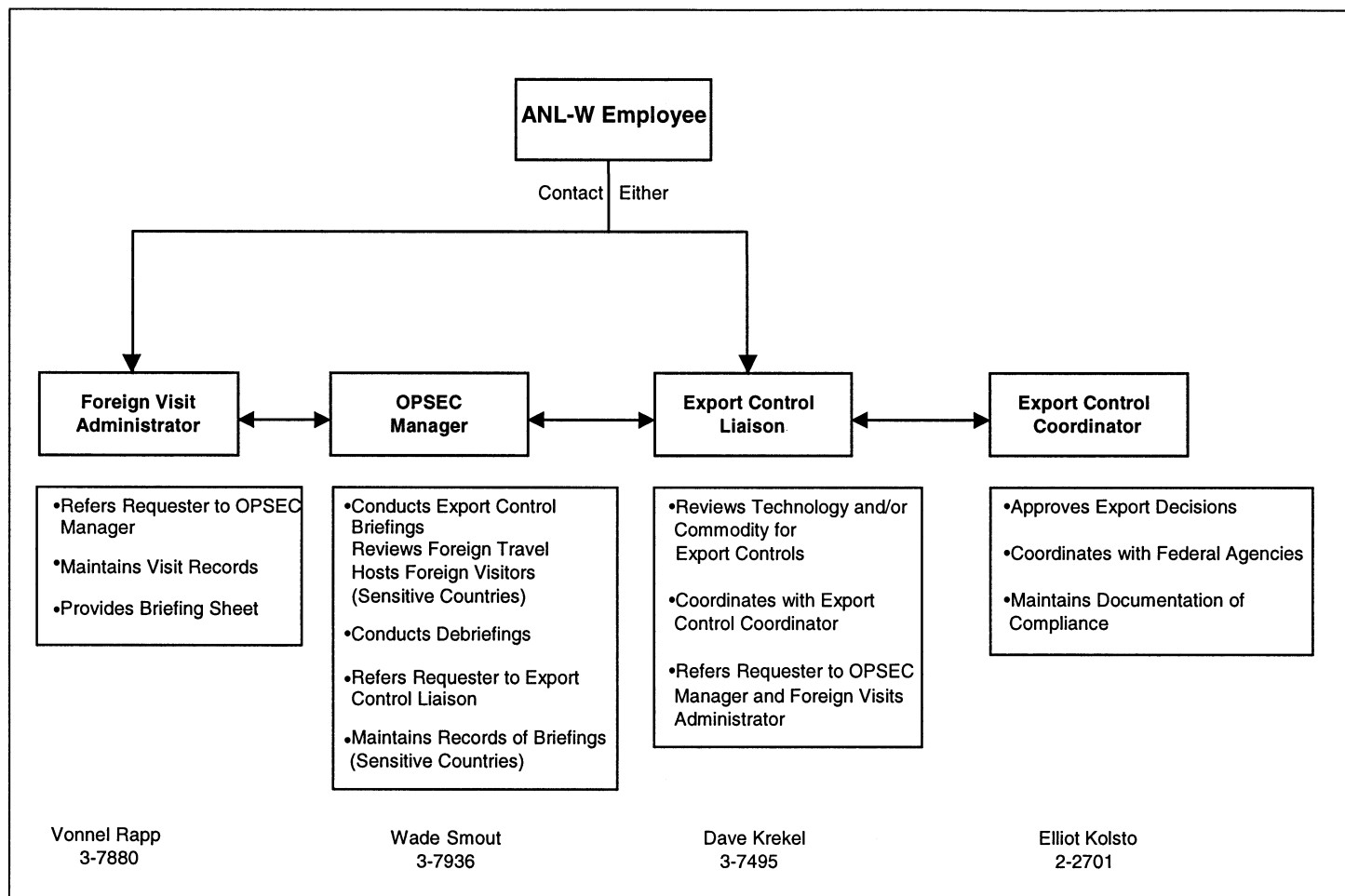


Figure 1a Export Control Functions of Argonne-East Staff and Organizations



**Figure 1b Export Control Process at Argonne-West**

# Section 2

## Understanding the Export/Import Control System

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### 2.1 What Is an Export?

An export is the actual shipment or transmission of items subject to the EAR out of the United States or the release of items subject to the EAR to a foreign national in the United States. Visual inspection or demonstration of commodities, equipment, facilities, or information by a foreign national can be deemed to be an export.

### 2.2 Why Are Export Controls Important?

The Export Administration Act of 1979 was established to assure that, while encouraging and allowing international commerce, the well-being and national security of the United States are maintained. The rules in the EAR were established to ensure that the Act was properly implemented and enforced.

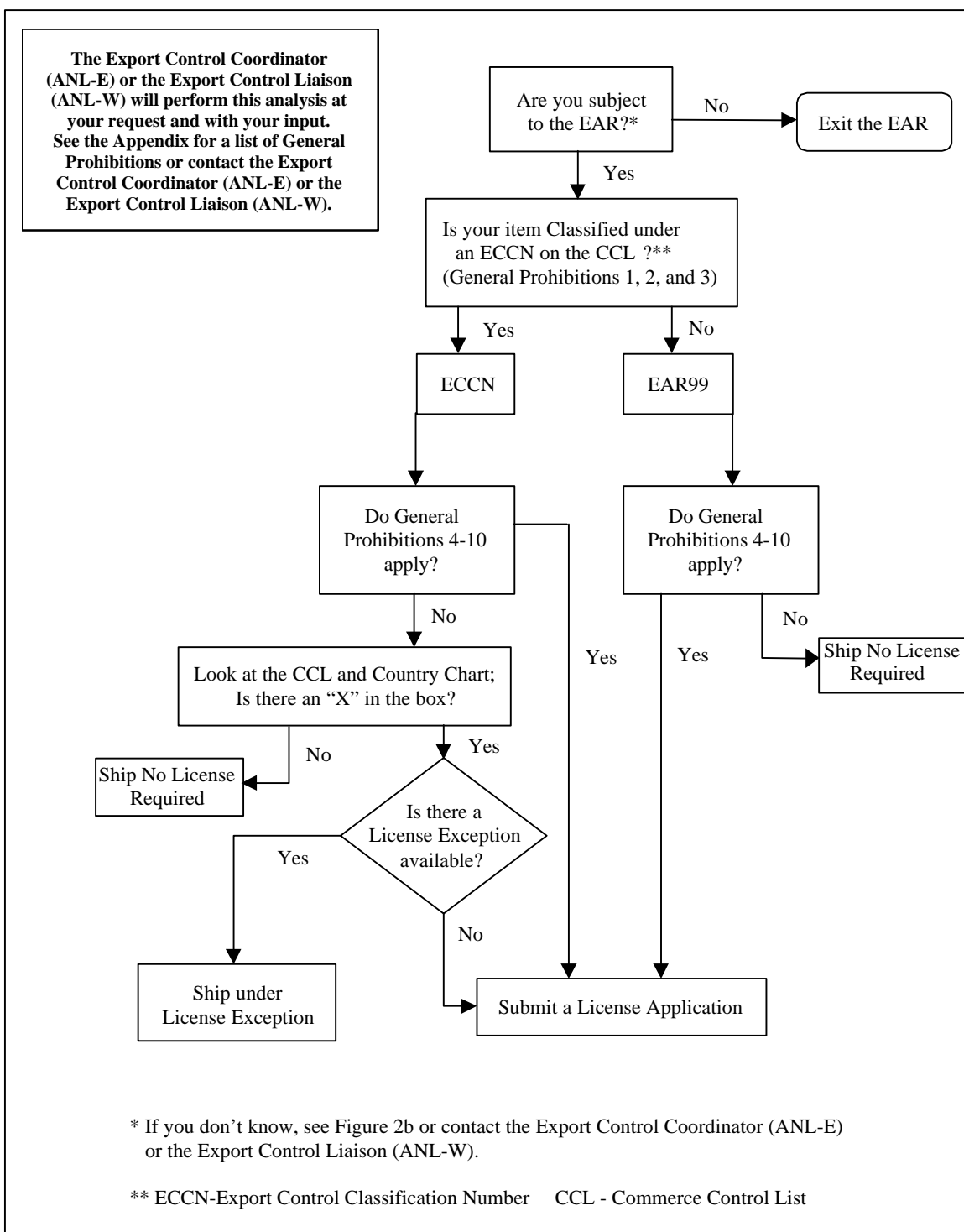
#### 2.2.1 Export Categories

The Department of Commerce's (DOC's) Bureau of Export Administration (BXA), which controls and administers the EAR, has classified commodities and technologies into essentially two groups: (1) those controlled under the EAR (these items can be shipped under the categories of "no license required" [NLR], "general exemption," or needing an individual "validated license" [VL]) or (2) those not controlled under the EAR (the BXA estimates that about 95% of the commodities leaving the United States fall into this category).

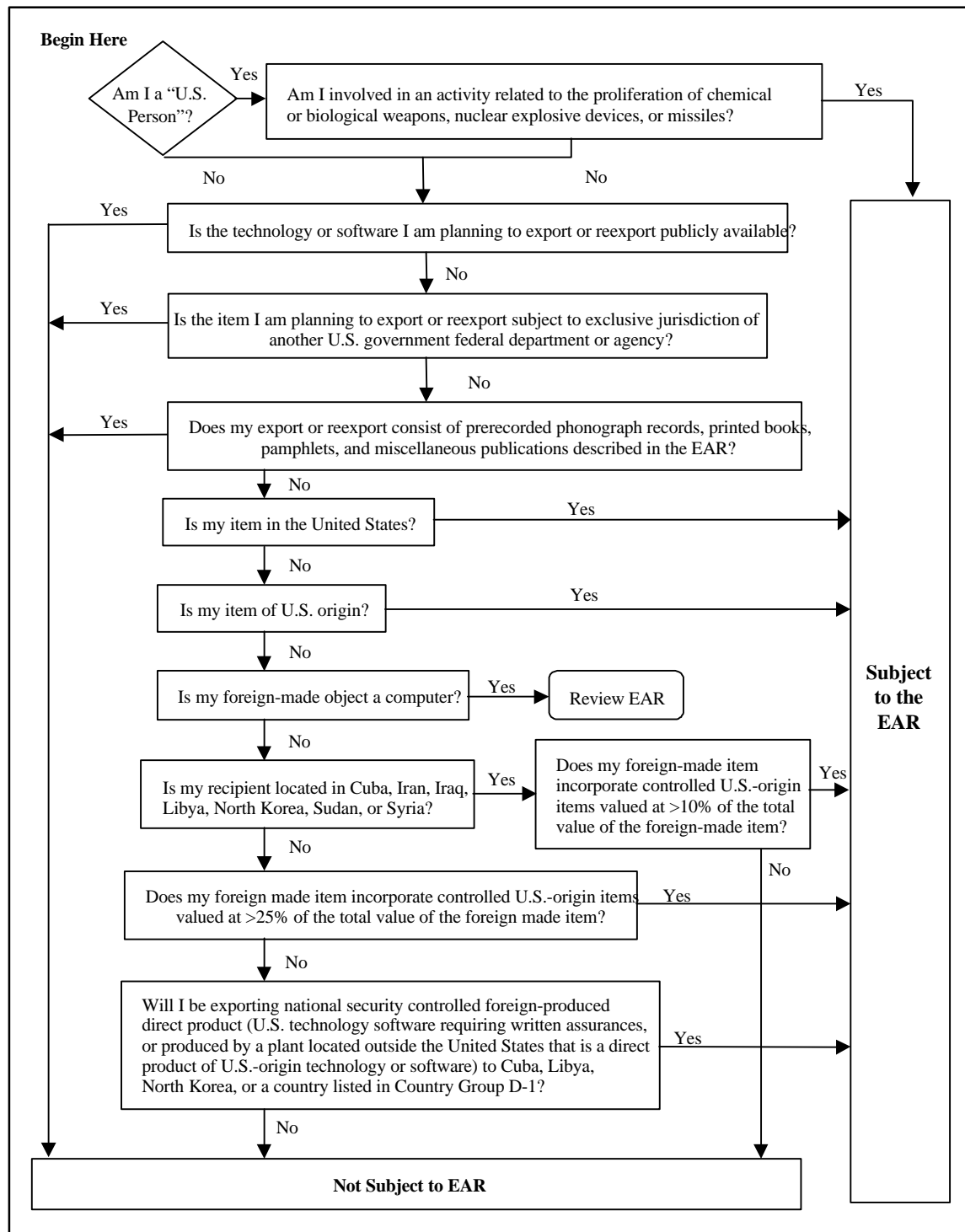
By reviewing Section 2.2.2, "Exports Not Subject to Export Controls," you can initially evaluate the item you wish to export. If you are confident that your planned export fits within one of the categories not subject to export controls, then there is a high probability that only Laboratory procedures related to material movement and/or intellectual property protection document review will be applicable. If you cannot confidently associate your planned export with one of the classifications that are not subject to export control, please call one of the identified resources to help you with your analysis and review.

The steps for using the EAR are presented in the Appendix. Figures 2a and 2b show the steps necessary for determining if your export is controlled by the EAR. To help you determine if your export is controlled, contact the Export Control Coordinator (Argonne-East on 2-2701) or the Export Control Liaison (Argonne-West on 3-7495), who can provide you with analysis materials.

Items that need a validated license may directly or indirectly affect national security. They include items that may involve chemical, biological, or nuclear proliferation equipment and precursor materials; advanced computers; encryption technology; and



**Figure 2a Export Decision Tree**



**Figure 2b Am I Subject to the Export Administration Regulations (EAR)?**



aerospace and marine navigational systems. *Do not attempt to classify these items yourself; contact the Export Control Coordinator (Argonne-East on 2-2701) or the Export Control Liaison (Argonne-West on 3-7495) to arrange for a determination.*

In addition, particular technologies, equipment, and information are subject to the EAR if the recipient is a foreign national who resides in a country considered to be sensitive (see Exhibit B). In addition to the countries identified in Exhibit B, there are also foreign entities that may require licensing of any technologies, equipment, or information prior to shipment or release. These entities are identified on the BXA Entity List, which is accessible through the Argonne Export Control web page.

The BXA Denial List, which is also accessible through the Argonne Export Control web page, contains the names of persons who may not directly or indirectly participate in any transaction involving any commodity, technologies, equipment, or information exported from the United States.

## **2.2.2 Exports Not Subject to Export Controls**

Many exports to non-embargoed, non-sensitive countries qualify for license exceptions, meaning that the export can occur without a validated license. Work performed at the Laboratory that is subject to the EAR falls into these categories. The following paragraphs provide examples of areas generally excepted from export control. For sample questions and answers related to various categories, refer to Exhibit C. If the item you wish to export does not clearly fall into one of the categories, please contact the Export Control Coordinator (Argonne-East on 2-2701) or the Export Control Liaison (Argonne-West on 3-7495).

### **2.2.2.1 Fundamental Research**

As indicated in the Laboratory policy preamble (see Section 1.2.2), *fundamental research is not subject to the EAR*. Fundamental research is defined as basic and applied research in science and engineering, the information resulting from which is ordinarily published and shared broadly within the scientific community. Such research can be distinguished from proprietary research and from industrial development, design, production, and product utilization, wherein the results are ordinarily restricted for proprietary or national security reasons. Information resulting from fundamental research is also not subject to the EAR.

#### **2.2.2.2 Published Information and Software (Publicly Available)**

*Published information and publicly available software are generally not subject to the EAR*. Information is “published” when it becomes generally accessible to the interested public in any form, including the following:

1. Publication in periodicals, books, and print, electronic, or any other media available for general distribution to any member of the public or to a community



of persons interested in the subject matter, such as those in a scientific or engineering discipline, either free or at a price that does not exceed the cost of reproduction and distribution;

2. Ready availability at libraries open to the public or at university libraries;
3. Patents and open (published) patent applications available at any patent office; and
4. Release at an open conference, meeting, seminar, trade show, or other open gathering.

Some U.S.- origin encryption software remains subject to the EAR, even when publicly available in the United States. The associated controls related to encryption software change frequently as the technology changes. Please contact the Export Control Coordinator (Argonne-East on 2-2701) or the Export Control Liaison (Argonne-West on 3-7495) for the most current guidance.

Software and information are considered published when available for general distribution, either free or at a price that does not exceed the cost of reproduction and distribution.

#### **2.2.2.3 Educational Information**

Educational information is not subject to the EAR if it is released by instruction in catalog courses and associated teaching laboratories of academic institutions.

#### **2.2.2.4 Patent Applications**

Information contained in a patent application, or an amendment, modification, supplement or division of an application, is not subject to export control if it is authorized for filing in a foreign country in accordance with the regulations of the Patent and Trademark Office, 37 CFR part 5.

Information contained in a patent application is not subject to export controls if it is

1. Prepared wholly from foreign-origin technical data, and the application is being sent to the foreign inventor to be executed and returned to the United States for subsequent filing in the U.S. Patent and Trademark Office or
2. Sent to a foreign country before or within six months after the filing of a U.S. patent application to obtain the signature of an inventor who was in the United States when the invention was made or who is a co-inventor with a person residing in the United States.





## 2.3 Who Is Responsible for Export Control?

As noted above, the Commerce Department's BXA has been assigned primary responsibility for export controls. The BXA has published export control regulations known as the EAR. These regulations are identified in the Code of Federal Regulations 15 CFR 730-774, including supplements.

The BXA interacts extensively with other federal agencies (e.g., Defense Department, Energy Department, State Department) for the enforcement and monitoring of exports. Customs is assigned the responsibilities of monitoring the entry and exit of people and commodities crossing U.S. borders; collecting duties; and seizing, detaining, or denying the entry/exit of people or commodities. For exports from the United States or reexports of U.S. goods back into the United States, Customs acts as a "physical check" to ensure that the required documentation/paperwork is in place. The BXA link to Customs is that it provides the document validation (i.e., the export license) that authorizes the export to occur.

Some items, while not export controlled under the EAR, are export controlled by other U.S. agencies. The following list indicates the department and associated area(s) of control:

- Department of State (DOS)

The International Traffic in Arms Regulations, administered by the Office of Defense Trade Controls.

- Treasury Department, Office of Foreign Assets (OFAC)

Regulations administered by OFAC implement broad controls and embargo transactions with certain foreign countries.

- U.S. Nuclear Regulatory Commission (NRC)

Regulations administered by the NRC control the export and reexport of technology related to the production of special nuclear materials (10 CFR part 110).

- Department of Energy

Regulations administered by the DOE control the export and reexport of technology related to the production of special nuclear materials.

- Patent and Trademark Office (PTO)

Regulations administered under PTO provide for the export to a foreign country of unclassified technology in the form of a patent application or an amendment, modification, or supplement thereto or division thereof (37 CFR part 5).



Contact the Export Control Coordinator (Argonne-East on 2-2701) or the Export Control Liaison (Argonne-West on 3-7495) for assistance in coordinating exports controlled by other federal agencies.

## **2.4 What Is the Role of U.S. Customs?**

The U.S. Customs Service is responsible for (1) monitoring exports at U.S. borders; (2) collecting duties (on imports); and (3) clearing, delaying, seizing, or denying entry/exit of people or commodities. Customs may also check the paperwork on people and commodities returning to the United States. Remember that countries you may visit also have import and export regulations, and it is important that you mark Laboratory equipment/property and have a Shipper's Export Declaration (SED) in your possession to prevent any unnecessary shipping delays.

## **2.5 Are There Other Types of Restrictions?**

In addition to some of the commodities, technologies, equipment, or information being restricted for export, exporters may face restrictions that are based on the end-user. The BXA Denied Parties list identifies individuals who, or organizations that, have violated export control regulations in the past and are prohibited from future exports. The BXA Entities list names entities/organizations identified as engaging in possible foreign defense activities and that should not receive commodities, technologies, equipment, or information without a license. The EAR requires that the Laboratory check published lists, which are available as "hot link" buttons on the Argonne Export Control web page, to ensure that the end-users are not on the BXA Entities list or the BXA Denied Parties list (also see Section 3.6).

## **2.6 What Are the Consequences of Violating Export Control Regulations?**

The Laboratory and/or the individual employee may be liable if significant violations occur. Personal consequences of significant violations can include paying duties, equipment seizure, questioning and searches, and delays if the appropriate documentation is not provided or available. If you attempt to circumvent the Laboratory policy for compliance with export control laws and regulations, you may face disciplinary action, up to and including termination. In addition, the Laboratory may decline to provide assistance if you encounter legal difficulties as a result of willful noncompliance with the policy. Criminal sanctions of up to \$1,000,000 and a prison term may be imposed, as well as civil penalties and administrative sanctions, including seizure of Laboratory equipment or technical data. Civil penalties are those that can directly affect you. Specific penalties are identified in Exhibit D.

Contact the Export Control Coordinator (Argonne-East on 2-2701) or the Export Control Liaison (Argonne-West on 3-7495) for assistance in coordinating exports controlled by other federal agencies.

## Section 3

# License and Documentation Requirements for Exporting or Shipping Commodities

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### 3.1 Licenses

If you are requesting that a commodity be exported, then you are responsible for obtaining the proper license or designating the appropriate license exception for it before export. The Export Control Coordinator (Argonne-East on 2-2701) or the Export Control Liaison (Argonne-West on 3-7495) can assist you. Please allow as much time as possible to ensure that any special documentation required is in order. (See Exhibit E for estimated lead-time requirements.)

#### 3.1.1 General Categories

For items subject to the EAR, about 95% of the commodities leaving the United States are identified under a miscellaneous commodity classification known as EAR-99 and are classified as no license required. These commodities, for example, range from medicines and medical supplies to automobiles and trucks. For *initial* classification of commodities, the Laboratory recommends that you ask the Export Control Coordinator or the Export Control Liaison to assist you.

#### 3.1.2 License Exceptions

A number of commodities that are export controlled may be exported without an individual validated license under a license exception. Although the commodity is controlled, a limited dollar value or amount, or other special circumstances, may permit it to be exported without a license. The Commerce Department establishes license exceptions that permit export within the provisions prescribed in the EAR. No written authorization is required for using a license exception, and no document is issued by the Commerce Department as a precondition to use a license exception. Many Laboratory commodities can be exported under a license exception or are classified no license required. Some common exceptions are listed in Table 1.

The exact definitions of these license exceptions may vary by commodity, and exceptions are not always available for all commodities. Some 30 different license exceptions currently exist for exports. The Export Control Coordinator (Argonne-East) or the Export Control Liaison (Argonne-West) will assist you in choosing the appropriate license exception for all Laboratory exports of commodities and technical data not requiring a validated license.



**Table 1 Definitions of License Exceptions**

<b>License Exceptions</b>	<b>Meaning/Use</b>
LVS	Limited Value Shipment
TSR	Restricted Technology and Software
TSU	Technology and Software Unrestricted
CTP	Computers (Below a designated MTOP threshold)
RPL	Service and Replacement Parts
GOV	Shipments to U.S. government personnel and agencies
CIV	Civil End-Use
TMP	Temporary export out of United States

### **3.1.3 Guidelines for Classifying Commodities**

The BXA lists 29 steps that are intended to guide the shipper through the export process.

Table 2 lists some of the key questions that you will need to answer as part of the classification process. The Export Control Coordinator (Argonne-East) or the Export Control Liaison (Argonne-West) can help you determine if the commodity or technology or software requires an export license. Exhibit E provides estimates of export process time frames. If the Commerce Department (BXA) has no concerns regarding the license request, approval can be obtained within nine days, but some validated licenses may require between 30 and 90 days for approval (or denial). Therefore, if you suspect that you may need a license for export, begin the process early. Exhibit F lists the forms that may be required as part of the export process.

Exhibits G and H provide Nuclear Controls and Missile Technology/Chemical and Biological Weapons checklists to help you focus on possible technology and end-user questions. If appropriate, please use these checklists to help you better define the export control issues. If you respond “yes” to any of the questions in the checklists, there is a high probability that an export license will be required, as will supporting export control documentation.

#### **3.1.4 Licenses for Exporting Commodities Owned by Government Agencies**

The government — including the Departments of Energy, Defense (DoD), and State and other agencies — has the right to export commodities for its own purposes and use. In instances where activities are in direct support of an agency’s program, you should inform the government program manager that the Laboratory, if appropriate, will turn over the commodity to the government agency to facilitate direct export by the agency, which will acquire the license for export. If the program manager does not want the



**Table 2 Some of the Questions Associated with Classifying Commodities**

Questions
<ul style="list-style-type: none"><li>• What specifically is the commodity or technology or software?</li><li>• What is the product, technical specifications, approximate dollar value, catalogue number, etc.?</li><li>• Is this work subject to DOE controls and approval and will DOE ship it?</li><li>• Is this work subject to another government agency's (DoD, Nuclear Regulatory Commission [NRC], etc.) control and/or approval and will that agency ship it?</li><li>• Why is the Laboratory doing this?</li><li>• Who is the sponsor and what is the name and telephone number of the contact?</li><li>• Does the sponsor know that the Laboratory is exporting?</li><li>• Is this commodity or technology publicly available?</li><li>• If a publication or report, will it be published in the open literature?</li><li>• If software, will it be made available as freeware or at cost?</li><li>• To what country is the commodity going?</li><li>• Is the recipient the ultimate end-user or is reexport or diversion possible?</li><li>• Is the end-user on the "denied" party list?</li><li>• Is the end-user on the "entity" list?</li><li>• Is the country "embargoed"?</li><li>• Are there any "red flags"?</li></ul>

agency to be involved in exporting the technology, then the Laboratory, as a contractor, must follow U.S. regulations and apply for an export license prior to foreign shipment.

*Commerce Department Export Licenses.* The BXA issues a license for the export of commodities under its licensing jurisdiction. The BXA and inter-agency reviewers (the DoD, DOE, DOS, the Arms Control Disarmament Agency, etc.) use certain standards to determine whether to grant or deny export license applications. The reviews include the following factors:

- Whether the commodities, software, or technology to be transferred are appropriate for the stated end-use and whether that stated end-use is appropriate for the end-user;
- The types of assurances or guarantees given;
- Whether the importing country is a party to the Nuclear Non-Proliferation Treaty and has all of its nuclear activities, facilities, or installations under International Atomic Energy Agency (IAEA) safeguards; and
- The military capabilities and objectives of the recipient country.

*Licenses for Exporting Defense Articles and Services.* Certain Laboratory exports of defense articles and services are under the jurisdiction of the DOS, Office of Defense Trade Controls. To obtain a DOS license, an exporter of defense articles/services must



register with the DOS as an exporter of arms. As a matter of policy, the Laboratory has not registered with the DOS, and exports of this nature are transferred to the U.S. Government. Be aware that this does not solely refer to weapons, but also includes technologies, information, and equipment that are weapons-*related* (e.g., mine detection technology and/or equipment).

*Licenses for Exporting Commercial Nuclear Reactors and Equipment and Nuclear Material.* The NRC has the authority to grant export licenses for commercial nuclear reactors and equipment, as well as certain nuclear material. The OCF-Special Materials organization works with DOE-CH, which applies for licenses when no general license exception is applicable. Contact the Argonne Special Materials group (2-7776) for assistance.

The NRC has export licensing authority for special nuclear materials employed in commercial, educational, or other specific applications (like TRIGA reactors). These nuclear items include, among other material, source material, by-product material, deuterium, and nuclear-grade graphite. Any material less than 2 nCi (740 Bq) is exempt from any license requirements. The checklist for Nuclear Controls-Related Equipment, Exhibit G, should help you determine if you require a license.

If a request to export nuclear material or equipment does not meet the provisions for an NRC license, a BXA license must be obtained. The Special Materials group will assist you in obtaining this license.

*License Requirements for Weapons-Related Activities.* The EAR currently requires export licenses when an exporter knows or has reason to know that the items will be used in the (1) design, development, production, or the use of missiles or (2) the design, development, production, stockpiling, or use of chemical or biological weapons. A license is also required when an exporter knows or has reason to know that an item will be used directly or indirectly in a nuclear weapons-related activity, or when an exporter is informed that the export's risk of diversion to any of the aforementioned activities anywhere in the world is unacceptable. Be aware that this requirement does not solely refer to weapons, but also includes technologies, information, and equipment that are weapons-*related* (e.g., mine detection technology and/or equipment).

### **3.1.5 Documentation Requirements for License Exceptions and Validated Licenses**

Per BXA regulations, the Laboratory requires supporting documentation that describes the decision process used to classify a commodity when license exceptions and validated licenses are requested. Thus, most export license applications and specific reexport authorization requests must be supported by documents that provide information concerning the disposition abroad of the goods and/or technology intended for export or reexport. On the basis of Commerce and Energy Department requirements, these records must be kept for five years; traditionally, Argonne Shipping keeps the records, along with the SED and the shipping manifest. Upon request, the Export Control Coordinator



(Argonne-East on 2-2701) or the Export Control Liaison (Argonne-West on 3-7495) will help you (1) determine if special documents are required and (2) obtain those documents.

### **3.2 Statement by Ultimate Consignee and Purchaser**

Depending on the country to which you are exporting a commodity, a Statement of Ultimate Consignee (BXA Form 711) may be required. The foreign consignee may be required to sign the statement and return it to the Export Control Coordinator or the Export Control Liaison for submission with the license application. The statement assures the BXA that the foreign end-user is fully aware of all responsibilities regarding U.S. exports restrictions requested by BXA and for the return or disposal of the licensed commodities or technology only in those foreign countries where the BXA has specifically authorized disposition.

### **3.3 Import and End-User Certificate and Delivery Verification Certificate**

Import and End-User Certificates are required for certain commodities valued above a specific dollar amount, for items controlled for national security reasons, or for items sent to particular countries. The foreign consignee must get an International Import Certificate from the government of the country of import and then transmit it to Argonne Shipping. BXA may require Delivery Verification Certificates as a condition of license. Contact the Export Control Coordinator (Argonne-East on 2-2701) or the Export Control Liaison (Argonne-West on 3-7495) for guidance.

### **3.4 Laboratory-Required Documentation**

Depending on the nature of the commodity or Laboratory property that you are shipping, the Laboratory requires different forms. The majority of items may be shipped by using an Argonne shipping order, form ANL-126C. On the basis of information gathered by Argonne Shipping, a shipping manifest will then be generated. If the commodities being shipped are export controlled, then additional documentation will be required.

#### **3.4.1 Documentation Requirements for Shipping Radioactive Materials**

To ship radioactive materials, you need form ANL-126A, Shipping Order for Radioactive Materials. You must contact the Argonne-East Special Materials group at 2-7776 or Argonne-West Security at 3-7347 to make arrangements for shipping any radioactive material. See Section 4 for additional details related to exporting property (see Exhibit F for a list of forms related to exporting).

#### **3.4.2 Documentation Requirements for Hand-Carried Items**

Hand-carried items must be treated as if they were being shipped, so a copy of the shipping order should be sent to Shipping. Use a shipping order (form ANL-126C) and state on the form that the items are to be hand-carried. Use the shipping order whenever



you leave the country or return with hand-carried items. If you frequently take the same equipment (i.e., a laptop computer) to pre-approved non-U.S. locations, the shipping order and associated paperwork can be made valid for up to one year. If a general license, license exception, or no license is required, hand-carried items must have shipping documents prepared before they are taken out of the country to assure that your equipment will not be seized. These documents are extremely important if you are transporting a computer containing software with encryption capabilities.

Every country's customs regulations are different, and you may encounter problems if you attempt to hand-carry material and equipment overseas without carrying the proper, completed forms. U.S. Customs may also require proof of ownership and assurance that the item was not purchased overseas. Contact the Export Control Coordinator (Argonne-East on 2-2701) or the Export Control Liaison (Argonne-West on 3-7495) before foreign trips if you plan to hand-carry items.

Some restrictions may apply to your laptop computers that contain either sensitive software or software with encryption capabilities above a particular level. Encryption software is controlled because of its functional capacity, not because it is informational. Contact the Export Control Coordinator (Argonne-East on 2-2701) or the Export Control Liaison (Argonne-West on 3-7495) before foreign trips if you plan to hand-carry items.

### **3.4.3 Letter of Assurance**

In some circumstances, a letter of assurance (see Exhibit I for a sample letter) is all that is required from the anticipated recipient of an export of a commodity or information. The attached sample indicates the type of information that should be contained in the letter. In addition, the letter should be on the recipient's letterhead and signed by an official of the organization receiving the export. This letter must be received by the Laboratory and sent to the BXA as part of the information package requesting an export license.

## **3.5 Documentation Requirements for Temporary Exports and Other Special Arrangements**

If you are exporting items temporarily, the laws of the foreign destination may require special arrangements. For example, a Certificate of Origin or Manufacturer's Affidavit may be required, or a bond may be requested to guarantee that the items will be eventually exported. Argonne Shipping can help you make this determination.

Duty is due each time a foreign manufactured item enters the United States, unless the item has been registered with U.S. Customs before or at the time of export. It is important to declare temporary or reexported items before they leave the United States. Usually, an SED is sufficient to cover reexports. If you hand-carry foreign-manufactured items (or items that are not easily identified as U.S.-made) or ship the items to the United States, Argonne Shipping will direct you to a broker who will make arrangements for the registration of the items at the time of export so that no duties will have to be paid upon return. If items made in the United States are not clearly marked as such, it is a good idea to register those items as well at time of export.





### **3.6 Know Your End-User: Guidance and Red Flags**

The EAR requires that exporters know their end-users/recipients. Exporters should know about items not specifically requiring Commerce Department approval in the form of a license exception (NLR or EAR-99 commodities). Exporters who knowingly ship items that violate the export regulations may be held liable under the EAR and could lose their export privileges and be fined or criminally prosecuted. If the end-user seems to be a potentially risky end-user, or the “red flags” described in the Appendix apply, immediately contact the Argonne Security Office and notify your line management. Together, they can decide if it is necessary to contact BXA.

The following questions are guidelines for determining if you run the risk of exporting something to a potentially risky end-user. If answers to these questions raise red flags, contact the Export Control Coordinator (Argonne-East on 2-2701) or the Export Control Liaison (Argonne-West on 3-7495).

- Is the end-user reluctant to offer information about the end-use of an item?
- Does the product’s capabilities fit the end-user’s line of business? (For example, if a small bakery places an order for several sophisticated lasers, that should raise a red flag.)
- Is the technology of the item incompatible with level of expertise in the country to which the product is being shipped? (For example, semiconductor manufacturing equipment would be of little use in a country without an electronics industry.)
- Are delivery dates vague, or are deliveries planned for out-of-the-way destinations?
- Is the shipping route unusual for the item and destination?
- Is the end-user evasive or unclear about whether the purchased product is for his/her sole use, export, or reexport?

### **3.7 Requirements for Exporting High-Performance Computers**

The National Defense Authorization Act (NDAA) of FY1998 establishes requirements for advance notification of exports and reexports of high-performance computers and post-shipment verification of such exports and reexports. (See Section 5.4 for additional information about exporting high-performance computers.)

## Section 4

# Exporting Property

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In general, Laboratory property is government property and is to be used only in the pursuit of official business. The Laboratory is required to keep track of government property, and different DOE missions may require property to be exported, loaned, surplus, disposed of, or screened for high-risk activities. The information in this section is intended to guide you to the appropriate Argonne Division and policy for the exporting or temporary exporting of such property. The categories of property exporting you are most likely to encounter include the following:

1. Laboratory or government property that is being exported, including property disposition after the program is completed (property is usually returned to the Laboratory);
2. Sensitive property that is excess, and recognition/notification of export controls and/or limitations to the buyer or consignee; and
3. Property that is hand-carried or shipped as baggage with Laboratory or other personnel while on travel.

### 4.1 Exporting Government-Owned Property

#### 4.1.1 Loaning Property

The Laboratory requires prospective borrowers of property to make their requests in writing. The lending cost center must provide a written statement that the requested property is not in use and indicate the Laboratory's possible future need for that property. The DOE may request data resulting from the use of the property. Additionally, the requested property must be unavailable from commercial sources (this applies to requests from non-DOE contractors) and must be necessary to carry out the borrower's programs. Property can be loaned for one year; the loan can be renewed, however.

DOE approval (Form 4420.2) is required for loans to foreign governments or organizations and for loans of high-risk property. See Exhibit A for the definition of high-risk property/information.

Please contact Argonne Property (2-7776 at Argonne-East or 3-7495 at Argonne-West) for further information regarding loaned property.

#### 4.1.2 Arranging to Title Equipment to Sponsors

If provisions have been specified in a Work for Others (WFO) proposal, Laboratory Proposal, Memorandum of Understanding (MOU), Interagency Agreement (IA), or



collaborative research and development agreement (CRADA) for the title of equipment to be held by a funding agency, the equipment may be sent to the sponsor.

The person requesting the shipment must interact with an Argonne-East Shipping Department representative to arrange for shipment, and the Divisional Property Representative (DPR) must sign the shipping order.

### **4.1.3 Conducting High-Risk Screening**

Before placing items into the excess property process, you and the DPR must perform a high-risk screening. This process will help ensure that no high-risk property is transferred from DOE ownership.

To help you and the DPR in the high-risk determination, you can access the Dual-Use List and the Trigger List, which are available as hot link buttons on the Argonne Export Control web page. If you require additional assistance, contact the Argonne-East OCF Property group at extension 2-7776 or the Argonne-West Supply group at 3-7495.

## **4.2 Arranging for Temporary Exports**

If you are exporting items temporarily, the laws of the foreign destination may require special arrangements. For example, a Certificate of Origin or Manufacturer's Affidavit may be required, or a bond may be requested to guarantee that the items will be eventually exported. Argonne Shipping can help you make this determination.

Duty is due each time a foreign manufactured item enters the United States, unless the item has been registered with U.S. Customs before or at the time of export. It is important to declare temporary or reexported items before they leave the United States. Usually, an SED is sufficient to cover reexports. If you hand-carry foreign-manufactured items (or items that are not easily identified as U.S.-made) or ship the items to the United States, the Argonne Shipping office will direct you to a broker who will make arrangements for the registration of the items at the time of export so that no duties will have to be paid upon return.

## Section 5

# Exporting Documents, Technical Data, Software, and Other Information

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### 5.1 Exporting Documents

Publications in the open literature, educational materials, and freeware (nominal fees for reproduction are allowable) are considered to be in the public domain and are not subject to export regulations.

Some software purchased in the United States that is to be delivered outside of the United States is considered an export and may require a validated license; in most cases, it can be released under a license exception (see Section 5.3). Software can take many forms, from commodities (shrink-wrapped software) to technical data (database or data files) to manuals.

There are several categories of information, including software that should be checked for both technology restrictions and country restrictions. Assistance in responding to requests for information, technology, and software can be obtained from the sources listed in Table 3. As a reminder, all new publications and presentations must receive approval from the Information and Publishing Division (IPD) prior to release or presentation (use form ANL-330).

U.S. postal authorities follow postal regulations and will not send letters or packages to embargoed countries.

### 5.2 Distinguishing between Publicly Available Data and Export-Controlled Data

The BXA often separates technical data and software into two categories: publicly available data (e.g., open literature) or export-controlled data. This separation may cause confusion. Publicly available data, like publications (such as library books, textbooks, newspapers and magazines, and freeware), are not subject to export controls under EAR. Data from basic R&D that are intended to be published or shown on a free web page or freeware are also not considered to be export controlled under EAR because the intent is to make the information freely available.

A rule of thumb to distinguish publicly available data from export-controlled data is to determine if they have commercial value. Open-literature publications and presentations are not export controlled under EAR because they have a basic research value and no near-term commercial value. Commercially valuable data, as the name implies, have value and may include, for example, company proprietary data, CRADAs, WFO agreements, non-disclosure agreements, patent applications, and classified data.



**Table 3 Sources of Assistance**

Type of Information/Request	Assistance Available from:*
1. Open literature publications	IPD/TIS <sup>a</sup> /PRS <sup>b</sup>
2. Sensitive technology publications, unclassified nuclear information (UCNI), applied technology or export controlled technology	IPD/TIS/PRS
3. Laboratory publications, such as “blue backs and green backs”	IPD
4. Data generated under CRADAs, WFOs, licensing, or other agreements	ITD <sup>c</sup> /LEG <sup>d</sup>
5. Programs interacting with foreign nationals or that occur overseas	HR-SEC <sup>e</sup>
6. Training programs for interacting with foreign nationals	HR
7. Correspondence or technical/technology inquiries	Division Office/ITD/ Program Office
8. Software requests	ITD/LEG
9. Freedom of Information Act Requests	DOE
* See “Contact List” on the Export Control web page.	
Abbreviations: <sup>a</sup> Technical Information Services. <sup>b</sup> Publication and Record Services. <sup>c</sup> Industrial Technology Development Center. <sup>d</sup> Legal. <sup>e</sup> Human Resources – Security.	

### 5.3 Exporting Technology

Technology is specific information necessary for the development, production, or use of a product. It may take the form of technical assistance or technical data and can be communicated in a physical form or verbally by mail, by telephone or facsimile, through visits, through workshops, or through computer networking. **In general, technical assistance and technical data that result from fundamental research (refer to Section 1.2.1 for the definition of fundamental research) are exempted from the EAR.**

*Technical Assistance.* Technical assistance is any method of transmitting technical information (other than simply providing written material). Technical assistance may be in the form of instruction, skills training, working knowledge, or consulting services. As an example, a Laboratory employee assisting personnel in setting up radiation monitoring equipment at a Russian nuclear facility is providing technical assistance.

*Technical Data.* Laboratory information that is scientific or engineering in nature should be considered technical data. Examples include technical reports, calculations, experimental results, and information exchanged during visits and presented at workshops. All Laboratory software, whether it is purchased, acquired from another organization, or



developed internally, is considered to be technical data and may be subject to export controls.

Technical data may be exported under two license exceptions: TSU (Technology and Software Unrestricted) and TSR (Technology and Software Restricted). TSU, previously identified as GTDA (General Technical Data Available), is a general license used to export to all destinations (except embargoed countries) those technical data that have been made available to the public in any form or that are intended for public release. Technical data in this category include published books, reprints, all unclassified and nonsensitive Laboratory-released publications, papers “approved for release” with intent to publish, and fundamental research not restricted by the government. To obtain approval for all data in this category, you must complete a Publication Release Form (ANL-330), have it signed by your management, and submit the signed form and two copies of the item to PRS, Building 203.

TSR is a general license exception that permits exports and reexports of technology and software to the ultimate destination for national security reasons only and identified as “TSR – Yes” in the Commerce Control List (CCL), provided that the software or technology is destined to Country Group B. A written assurance is required from the consignee before exporting technology and software under this License Exception.

## **5.4 Exporting High-Performance Computers**

The National Defense Authorization Act (NDAA) of FY98 contains provisions regarding exports and reexports of high-performance computers. The NDAA establishes requirements for advance notification of exports and reexports of high-performance computers and post-shipment verification of such exports and reexports.

High-performance computers are defined on the basis of a calculation developed by the Department of Commerce: Millions of Theoretical Operations Per Second (MTOPS), which is a standard for measuring machine performance. Although a formula is available for calculating the MTOPS value of a machine, BXA recommends that you contact the computer vendor to obtain the MTOPS value. Current desktop and laptop computers are not fast enough to be defined as high-performance computers.

If you plan to export a computer that you believe may be considered a high-performance computer, contact the Export Control Coordinator (Argonne-East on 2-2701) or the Export Control Liaison (Argonne-West on 3-7495) for assistance in determining the MTOPS value.

## **5.5 Exporting Software**

Sometimes, software is exported by itself, but it may also be exported with equipment or as part of a programmatic effort. All cases need to be checked for licensing



requirements. If software developed by the Laboratory *is not publicly available* (see Section 5.2), you must contact ITD's export control person and/or your DOE Program Manager for written permission, if you intend to export it according to current DOE guidelines (DOE Guide 1430.1D-1). You can also arrange for the DOE Program Manager to export the software. DOE staff will work with BXA staff to determine if any special conditions apply, including licensing for export. Forward requests from any foreign country for software to the Energy Science and Technology Software Center (ESTSC) in Oak Ridge, TN.

Unless you have appropriate licensing, you cannot export software capable of data encryption where the encryption capabilities exceed a designated threshold. With some restrictions, you can, however, hand carry a laptop that has encryption capabilities. (The associated controls related to encryption software are modified frequently because the technology changes. Please contact the Export Control Coordinator [Argonne-East on 2-2701] — or the Export Control Liaison [Argonne-West on 3-7495] — for the most current guidance.)

The laptop must not be out of the country for more than one year; must be in your possession and control at all times; and must not be available to foreign nationals for any purpose, including copying, presentation, marketing, sale, reexport, or transfer of ownership or control. This exception can be classified under the general license of a TMP (Temporary Export). Other exceptions include the following:

- If the Commerce Department has issued a product-specific ruling confirming the exception of Key Management Infrastructure (KMI) eligibility, then the encryption software does not require licensing.
- If the encryption software is using RC2 or RC4 algorithm up to 40 bits and is not being shipped to Cuba, Iran, Iraq, Libya, North Korea, Sudan, or Syria, then the software can be classified as TSU.

Contact the Export Control Coordinator (Argonne-East on 2-2701) or the Export Control Liaison (Argonne-West on 3-7495) for guidance before your trip or any attempt to export encryption software.

## **5.6 Exporting Information in CRADAs, WFOs, and Licensing and Other Agreements**

The Laboratory works cooperatively with industry and foreign entities and employs a variety of collaborative instruments, including CRADAs, WFO contracts, licensing agreements, collaborative agreements, DOE-sponsored initiatives, high-temperature superconductivity agreements, subcontracts, user facility agreements, nondisclosures, and beta testing agreements. When Laboratory representatives interact with foreign nationals, all of these types of agreements or arrangements are subject to export control.

As a note, the agreements may have general intellectual property restrictions in place. WFOs have a dissemination restriction on company proprietary data, while CRADAs and



Superconductivity Agreements may have a five-year and two-year confidentiality limit, respectively. If any inventions are generated under these agreements, a ban on publication and presentation at open meetings may also be in effect.

Questions regarding these areas should be directed to ITD on extension 2-4962 (Argonne-East).

## **5.7 Coordinating Freedom of Information Act Requests**

Initially, Freedom of Information Act (FOIA) requests are coordinated through IPD (extension 2-4221) and, in some cases, forwarded to the office of Timothy Crawford (DOE-ARG). In those instances where the FOIA request is forwarded, call 2-2305 (Argonne-East) or 3-7446 (Argonne-West) for assistance.



## Section 6

# Exporting Nuclear and Nonproliferation-Related Commodities and Activities

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The Nuclear Non-Proliferation Act of 1978 requires that the President publish procedures regarding the Commerce Department's control over the export of items under its jurisdiction that could be for nuclear explosive purposes. The NRC administers regulations governing the export of nuclear material and equipment. The DOE governs certain activities involving nuclear reactors and other nuclear fuel-cycle facilities. The Commerce Department restricts exports to certain nuclear end-uses and end-users.

Specific authorization by the Secretary of Energy is required before you can undertake the activities or export the items described in Sections 6.1–6.4. The DOE Program Manager is the point of contact for such authorizations.

### 6.1 Production Activities

Authorization is required before engaging directly or indirectly in the production of special nuclear material (plutonium, uranium-233, or uranium enriched above 0.711% by weight in the isotope uranium-235) in any of the countries listed in 10 CFR 810 – Assistance to Foreign Atomic Energy Activities. You can obtain detailed information on-line by accessing the web page at the following address:  
<http://www.access.gpo.gov/nara/cfr/waisidx/10cfr810.html>.

### 6.2 Sensitive Nuclear Technology

Authorization is required before providing any foreign country with sensitive nuclear technology. Sensitive nuclear technology is defined as any information that is not available to the public or that is important to the design, construction, fabrication, operation, or maintenance of a uranium-enrichment or nuclear fuel reprocessing facility or a facility for the production of heavy water.

### 6.3 Examples of Activities Involving Reactors and Facilities

Authorization is required before engaging in or providing assistance with any of the following activities for any foreign country:

- Designing production reactors or facilities for the separation of isotopes of source material (uranium or thorium, other than special nuclear materials or ores that contain by weight 0.05% or more of uranium or thorium, or any combination of these) or the enrichment of special nuclear material, chemical processing of irradiated special nuclear material (reprocessing), fabrication of nuclear fuel containing plutonium, or the production of heavy water;
- Constructing, fabricating, operating, or maintaining such reactors or facilities;



- Designing, constructing, fabricating, operating, or maintaining components specially designed, modified, or adapted for use in such reactors or facilities;
- Designing, constructing, fabricating, operating or maintaining major critical components for use in such reactors or at a production scale; or
- Training in the above-listed activities.

## **6.4 Authorization for Safeguarded and Unsafeguarded Nuclear Activities**

International Atomic Energy Agency (IAEA) safeguards will apply at the relevant facility or installation when it contains any source or special fissionable material (regardless of whether or not it contains such material at the time of export), or where any such obligation is not met. An IAEA general license, SAFE, may be applicable if you work on an IAEA program. The Export Control Coordinator (Argonne-East on 2-2701) or the Export Control Liaison (Argonne-West on 3-7495) will determine if SAFE is an appropriate general license.

Authorization is required for safeguarded and unsafeguarded nuclear fuel-cycle activities, including research on or development, design, manufacture, construction, operation, or maintenance of any of the following facilities or components for such facilities:

- Facilities for the chemical processing of irradiated special nuclear or source material,
- Facilities for the production of heavy water,
- Facilities for the separation of isotopes of source and special nuclear material, or
- Facilities for the fabrication of nuclear reactor fuel containing plutonium.

## Section 7

# Exporting Defense Science-Related Activities

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The Arms Export Control Act (AECA) authorizes controls primarily on exports that are deemed to be inherently military in nature. The AECA authorizes the control of exports of defense. The State Department exercises its export control authority over these defense articles and services under the International Traffic in Arms Regulations (ITAR) (22 CFR S 120 et seq).

The Commerce Department has restrictions on certain nuclear end-uses and end-users. The Laboratory must apply for a validated license if the item(s) to be exported, or the end-user, is associated directly or indirectly with any of the following activities:

- The design, development, production, or use of missiles.
- The design, development, production, stockpiling, or use of chemical or biological weapons.

The Laboratory has traditionally not been involved in defense science or military-related activities or programs; however, on occasion, the Laboratory may have been involved in some subcomponent activity as a subcontractor. As a matter of policy, the Laboratory, since it is not and has no desire to be a registered arms dealer, will arrange for exports of weapons-related items to be processed through the Department of Energy or other federal agency.

## Section 8

# Importing Commodities

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Argonne's Shipping Department is actively involved in importing activities. All imported equipment and materials require clearance through U.S. Customs, and they may require payment of a duty. In addition, temporary imports, like temporary exports, of equipment must be properly marked and cleared to avoid delays, additional Customs duties, and possible seizures. Please direct any import activities, as well as any questions, to the Shipping Department, the Export Control Coordinator (Argonne-East on 2-2701) or the Export Control Liaison (Argonne-West on 3-7495).

You can find additional information about responsibilities related to Customs and duties in Argonne's *Procurement Operations Manual*, Chapter IX, paragraph 4f.

### 8.1 Duty

A duty is a tax or fee imposed on a commodity. Duties are levied for a variety of reasons, including creation of extra income, protection of U.S. industries from foreign-subsidized industries, protection from foreign product dumping, as well as protection from other unfair trade practices. Most imports will incur a duty unless the import

- Is temporary (will remain at the Laboratory less than one year, although this period can be extended),
- Is duty-free under the Harmonized Tariff System,
- Is duty-free under a special program,
- Has duty-free status by grant from the U.S. Treasury and the Department of Commerce, or
- Is a return of commodities previously exported from the Laboratory by any means that were registered with U.S. Customs at time of export.

The requesting Division must pay duty and processing fees to get the imported commodities released from U.S. Customs, unless other arrangements have been made. Make sure that the Laboratory Purchase Order number (if applicable) and contact's name and telephone number appear on the invoice sent with the shipment. The foreign shipper will call the Argonne Shipping Department for such information as classification of item and type of entry, if necessary.



## 8.2 Arranging for Temporary Imports

If a commodity is being imported for testing or experimentation, for example, and

- Will be here less than one year and
- Will not be altered in any way,

then the Argonne Shipping Department may be able to set up a Temporary Import Bond (TIB). One condition of a TIB is that the imported materials must be returned or disposed of (under U.S. Customs' supervision) within one year from the date of importation. You can get an extension if you notify Argonne Shipping *well in advance* of the expiration of the one-year deadline.

Some materials (e.g., chemicals) that will be consumed during an experiment and would otherwise be subject to duty may be brought in under a TIB. Argonne Shipping must be notified that the commodity will be consumed.

When you are ready to export or destroy any part of a commodity imported under a TIB for *any reason*, including repair/replacement, you must notify Argonne Shipping immediately and reference the TIB number on the shipping order (form ANL-126C).

## 8.3 Requesting Duty-Free Entry

If a scientific instrument or apparatus

- Is not being manufactured in the United States,
- Is not a part of another instrument or apparatus,
- Is used to further the cause of peace,
- Is for purely scientific research, and
- Will not be used commercially for five years,

you can submit a request to the U.S. Treasury Department and the Commerce Department for duty-free entry. If you are importing something under a purchase order that may fall under the above conditions, please call the Argonne Procurement Department. This process can be quite time-consuming, so please give the Procurement Department as much advance notice as possible.

Additional information about responsibilities related to Customs and duties can be found in the *Procurement Operations Manual*, Chapter IX, paragraph 4f.

If the import is not related to a purchase, you can obtain assistance from Argonne Shipping.



## 8.4 Declaring Imports

All articles brought into the United States by any individual require declaration to U.S. Customs at the port of first arrival. Never pack personal items with scientific equipment you intend to ship or hand-carry back into the United States. Carry a copy of your signed shipping order (form ANL-126C) with the scientific item or equipment to document Laboratory ownership when coming through U.S. Customs.

## Section 9

# Interacting with Foreign Visitors and Visiting Foreign Countries

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The Laboratory has prepared information (see Exhibits J and K) to help you determine if there are export control implications associated with interactions with foreign nationals. You can also find this information on the Export Control web page. For additional information, contact Argonne-East Security (2-5737), Argonne-West Security (3-7523), the Export Control Coordinator at Argonne-East (2-2701), or the Export Control Liaison at Argonne-West (3-7495).

## Exhibit A

# Frequently Used Nomenclature and Terms

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BXA	Bureau of Export Administration, an agency within the Department of Commerce.
Commodity	Material and equipment (i.e., computers, information, tools).
Consignee	Person to whom commodities/technology is being shipped. Can be an agent holding material for another.
Correspondence	The term correspondence is generally used when one mails non-technical or administrative information (e.g., hotel reservations, thank-you notes, checks for registrations, visa documents). The term correspondence cannot be used if any technical data are enclosed. If a mailing contains both technical data and correspondence, it is treated as technical data.
Customs Broker	Person who clears imports through U.S. Customs.
Deemed Export	Any communication of technical data to a foreign national, whether it takes place in the United States or abroad. Technical information (data) provided to a foreign national verbally, by mail, by telephone or facsimile, through visits or workshops, or through computer networking is an export. If a foreign national observes equipment or a process, it may constitute an export of technical data, if significant details are revealed.
EAR	Export Administration Regulations, 15 CFR 730-774.
ECCN	The Export Control Classification Number identifies items on the Commerce Control List that are subject to the export licensing authority of the Bureau of Export Administration.
End-Use	A detailed description of how the ultimate consignee intends to use the commodities being exported.
End-User	Person ultimately using the commodities/technology being exported.
Export	To “export” means to actually ship or transmit items subject to the Export Administration Regulations (EAR) out of the United States or to release technology or software subject to the EAR to a foreign national in the United States. Visual inspection or demonstration of commodities, equipment, facilities, or information by a foreign visitor can be deemed to be an export.
Export Control Coordinator	The Laboratory’s Export Control Coordinator will assist the requester in





(Argonne-East)	obtaining information/assistance to safely export equipment, material, technology, and information.
Export Control Liaison (Argonne-West)	The Laboratory's Export Control Liaison will assist the requester in obtaining information/assistance to safely export equipment, material, technology, and information.
Fundamental Research	<p>Fundamental research is defined as basic and applied research in science and engineering, the information resulting from which is ordinarily published and shared broadly within the scientific community.</p> <p>Fundamental research can be distinguished from proprietary research and from industrial development, design, production, and product utilization in that the results of the latter are ordinarily restricted for proprietary or national security reasons. In general, fundamental research is excepted from the EAR.</p>
High-Risk	<p>There are multiple categories of high-risk property, which include:</p> <p><i>Automatic Data Processing Equipment</i> is equipment used to process export-controlled or unclassified controlled nuclear information.</p> <p><i>Especially Designed or Prepared Equipment</i> is equipment for use in the nuclear fuel cycle or contained in the "Trigger" list.</p> <p><i>Export-Controlled Property</i></p> <p><i>Export-Controlled Information</i></p> <p><i>Hazardous Property</i> is personal property, including scrap or waste, that is ignitable, corrosive, reactive, or toxic.</p> <p><i>Proliferation Sensitive Property</i> is nuclear-related or dual-use equipment, material, or technology.</p> <p><i>Radioactive Property</i> is any material/equipment that is contaminated with radioactivity and that emits ionizing radiation.</p> <p><i>Special Nuclear Material (SNM)</i></p> <p><i>Unclassified Controlled Nuclear Information (UCNI)</i></p>
License Exception	Established by the U.S. Department of Commerce, permitting export within the provisions prescribed in the Export Administration Regulations. Examples include LVS, TMP, and GOV (see Table 1, p. 14, for list of license exceptions).



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Property Disposition	The method to control, direct, or dispose of property.
Reexport	An actual shipment or transmission of items subject to the EAR from one foreign country to another foreign country or the release of technology or software subject to the EAR to a foreign national outside the United States.
Requester	Person who requests the export or import of commodities/technology.
SED	Shipper's Export Declaration — a document used by the Bureau of the Census for compiling U.S. export trade statistics and by BXA in administering and enforcing the Export Administration Act and its regulations.
SO	Shipping Order — Internal ANL form 126C or 126A, required for shipping any item off-site.
Technical Assistance	May take such forms as instruction, skills training, working knowledge, or consulting services.
Technical Data	May take the form of a blueprint, plan, diagram, model, formula, table, engineering design, or specifications, as well as manuals or instructions written or recorded on other media or devices, such as disk, tape, or read-only memories.
Technology	Specific information necessary for the development, production, or use of a product. It may take the form of technical data or technical assistance.
UCNI	Unclassified Controlled Nuclear Information — In 1982, the Atomic Energy Act of 1954 was amended by adding Section 148, which allows for the prohibition of unauthorized dissemination of certain unclassified sensitive U.S. Government information that could reasonably be expected to have a significant adverse effect on public health and safety or the common defense and security by significantly increasing the likelihood of (a) illegal production of nuclear weapons or (b) theft, diversion, or sabotage of nuclear materials, equipment, or facilities.
U.S. Customs	The United States Customs Service of the Department of the Treasury.

## Exhibit B

# Embargoed and Sensitive Countries

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There is a difference between embargoed and sensitive countries. Embargoed countries are those that have U.S. or United Nations sanctions against them; NOTHING should be sent to those countries, without a license review by the BXA, by any method, including, but not limited to, mail, electronic transmissions (e-mail, faxes), or shipping, including third-party routes. Sensitive countries are countries that may receive certain documents, software, or commodities, provided that these items are not restricted. For sensitive countries, the content of these documents, software, or commodities must be checked to ensure that they are exportable. The same logic applies to communications with nationals of these countries wherever they may occur, foreign visitors to the Laboratory from these countries, or Laboratory staff visiting these countries.

DOE/DOC Sensitive Countries (Item content must be checked before transmittal)

**NOTE: This list is intended for Argonne National Laboratory Internal Use Only and not for General Distribution. Please refer to the “Sensitive Countries” entry contained in the Export Controls web page to view the list of Sensitive and Embargoed Countries.**

In DOE documentation the DOC-Embargoed Countries are referred to as Terrorist or Terrorist Supporting Countries.

A review of the BXA Entity list and the BXA Denial list is also appropriate to confirm that the person(s)/entity associated with the export is not on either restricted list. These lists are available on the Argonne Export Control web page.

# Exhibit C

## Questions and Answers: Technology and Software Subject to the Export Administration Regulations

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The questions and answers (Q&As) in this exhibit are intended to guide you in understanding how BXA interprets the regulations related to the sections listed below. The list is only illustrative, not comprehensive; although some of the Q&As are not directly applicable to exact circumstances at Argonne, they are used as examples that may parallel some situations at Argonne. In addition, facts or circumstances that differ in any material way from those set forth in the questions or answers should be considered under the applicable provisions of the EAR. Exporters should note that the provisions of this supplement do not apply to encryption software (including source code). The Q&As are divided into nine sections, according to topic, as follows:

- Section A: Publication of technology and exports and reexports of technology that has been or will be published.
- Section B: Release of technology at conferences.
- Section C: Educational instruction.
- Section D: Research, correspondence, and informal scientific exchanges.
- Section E: Federal contract controls.
- Section F: Commercial consulting.
- Section G: Software.
- Section H: Availability in a public library.
- Section I: Miscellaneous.



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### Section A: Publication.

Question A(1): I plan to publish in a foreign journal a scientific paper describing the results of my research, which is in an area listed in the EAR as requiring a license to all countries except Canada. Do I need a license to send a copy to my publisher abroad?

Answer: No. This export transaction is not subject to the EAR. The EAR does not cover technology that is already publicly available, nor does it cover technology that is made public by the transaction in question. Your research results would be made public by the planned publication. You would not need a license.

Question A(2): Would the answer differ depending on where I work or where I performed the research?

Answer: No. Of course, the result would be different if your employer or another sponsor of your research imposed restrictions on its publication.

Question A(3): Would I need a license to send the paper to the editors of a foreign journal for review to determine whether it will be accepted for publication?

Answer: No. This export transaction is not subject to the EAR because you are submitting the paper to the editors with the intention that the paper will be published if favorably received.

Question A(4): The research on which I will be reporting in my paper is supported by a grant from the Department of Energy (DOE). The grant requires prepublication clearance by DOE. Does that make any difference under the Export Administration Regulations?

Answer: No, the transaction is not subject to the EAR. But if you publish in violation of any Department of Energy controls you have accepted in the grant, you may be subject to appropriate administrative, civil, or criminal sanctions under other laws.

Question A(5): We provide consulting services on the design, layout, and construction of integrated circuit plants and production lines. A major part of our business is the publication for sale to clients of detailed handbooks and reference manuals on key aspects of the design and manufacturing processes. A typical cost of publishing such a handbook and manual might be \$500; the typical sales price is about \$15,000. Is the publication and sale of such handbooks or manuals subject to the EAR?

Answer: Yes. The price is above the cost of reproduction and distribution. Thus, you would need to obtain a license or qualify for a License Exception before you could export or reexport any of these handbooks or manuals.

Question A(6): We sell electronically recorded information, including software and databases, at wholesale and retail. Our products are available by mail order to any member of the public, though intended for specialists in various fields. They are priced to maximize



sales to persons in those fields. Do we need a license to sell our products to foreign customers?

Answer: You would not need a license for otherwise controlled technology or software if the technology and software are made publicly available at a price that does not exceed the cost of production and distribution to the technical community.

#### Section B: Conferences.

Question B(1): I have been invited to give a paper at a prestigious international scientific conference on a subject listed as requiring a license under the EAR for export to all countries, except Canada. Scientists in the field are given an opportunity to submit applications to attend. Invitations are given to those judged to be the leading researchers in the field, and attendance is by invitation only. Attendees will be free to take notes, but not to make electronic or verbatim recordings of the presentations or discussions. Some of the attendees will be foreigners. Do I need a license to give my paper?

Answer: No. Release of information at an open conference and information that has been released at an open conference is not subject to the EAR. The conference you describe fits the definition of an open conference.

Question B(2): Would it make any difference if there were a prohibition on making any notes or other personal record of what transpires at the conference?

Answer: Yes. To qualify as an “open” conference, attendees must be permitted to take notes or otherwise make a personal record (although not necessarily a recording). If note taking or the making of personal records is altogether prohibited, the conference would not be considered “open.”

Question B(3): Would it make any difference if there were also a registration fee?

Answer: That would depend on whether the fee is reasonably related to costs and reflects an intention that all interested and technically qualified persons should be able to attend.

Question B(4): Would it make any difference if the conference were to take place in another country?

Answer: No.

Question B(5): Must I have a license to send the paper I propose to present at such a foreign conference to the conference organizer for review?

Answer: No. A license is not required under the EAR to submit papers to foreign organizers of open conferences or other open gatherings with the intention that the papers will be delivered at the conference, and so made publicly available, if favorably received. The submission of the papers is not subject to the EAR.



Question B(6): Would the answers to any of the foregoing questions be different if my work were supported by the Federal Government?

Answer: No. You may export and reexport the papers, even if the release of the paper violates any agreements you have made with your government sponsor. However, nothing in the EAR relieves you of responsibility for conforming to any controls you have agreed to in your Federal grant or contract.

#### Section C: Educational Instruction.

Question C(1): I teach a university graduate course on design and manufacture of very high-speed integrated circuitry. Many of the students are foreigners. Do I need a license to teach this course?

Answer: No. Release of information by instruction in catalog courses and associated teaching laboratories of academic institutions is not subject to the EAR.

Question C(2): Would it make any difference if some of the students were from countries to which export licenses are required?

Answer: No.

Question C(3): Would it make any difference if I talk about recent and as yet unpublished results from my laboratory research?

Answer: No.

Question C(4): Even if that research is funded by the Government?

Answer: Even then, but you would not be released from any separate obligations you have accepted in your grant or contract.

Question C(5): Would it make any difference if I were teaching at a foreign university?

Answer: No.

#### Section D: Research, Correspondence, and Informal Scientific Exchanges.

Question D(1): Do I need a license in order for a foreign graduate student to work in my laboratory?

Answer: Not if the research on which the foreign student is working qualifies as “fundamental research.” In that case, the research is not subject to the EAR.



Question D(2): Our company has entered into a cooperative research arrangement with a research group at a university. One of the researchers in that group is a PRC national. We would like to share some of our proprietary information with the university research group. We have no way of guaranteeing that this information will not get into the hands of the PRC scientist. Do we need to obtain a license to protect against that possibility?

Answer: No. The EAR do not cover the disclosure of information to any scientists, engineers, or students at a U.S. university in the course of industry-university research collaboration under specific arrangements between the firm and the university, provided these arrangements do not permit the sponsor to withhold from publication any of the information that he provides to the researchers. However, if your company and the researchers have agreed to a prohibition on publication, then you must obtain a license or qualify for a License Exception before transferring the information to the university. It is important that you as the corporate sponsor and the university get together to discuss whether foreign nationals will have access to the information, so that you may obtain any necessary authorization prior to transferring the information to the research team.

Question D(3): My university will host a prominent scientist from the PRC who is an expert on research in engineered ceramics and composite materials. Do I require a license before telling our visitor about my latest, as yet unpublished, research results in those fields?

Answer: Probably not. If you performed your research at the university, and you were subject to no contract controls on release of the research, your research would qualify as “fundamental research.” Information arising during or resulting from such research is not subject to the EAR. You should probably assume, however, that your visitor will be debriefed later about anything of potential military value he learns from you. If you are concerned that giving such information to him, even though permitted, could jeopardize U.S. security interests, the Commerce Department can put you in touch with appropriate Government scientists who can advise you. Write to Department of Commerce, Bureau of Export Administration, P.O. Box 273, Washington, DC 20044.

Question D(4): Would it make any difference if I were proposing to talk with a PRC expert in China?

Answer: No, if the information in question arose during or resulted from the same “fundamental research.”

Question D(5): Could I properly do some work with him in his research laboratory inside China?

Answer: Application abroad of personal knowledge or technical experience acquired in the United States constitutes an export of that knowledge and experience, and such an export may be subject to the EAR. If any of the knowledge or experience you export in this way requires a license under the EAR, you must obtain such a license or qualify for a License Exception.





Question D(6): I would like to correspond and share research results with an Iranian expert in my field, but the technology that I am dealing with requires an export license to all destinations except Canada. Do I need a license to do so?

Answer: Not as long as we are still talking about information that arose during or resulted from research that qualifies as “fundamental.”

Question D(7): Suppose the research in question were funded by a corporate sponsor and I had agreed to prepublication review of any paper arising from the research?

Answer: Whether your research would still qualify as “fundamental” would depend on the nature and purpose of the prepublication review. If the review is intended solely to ensure that your publications will neither compromise patent rights nor inadvertently divulge proprietary information that the sponsor has furnished to you, the research could still qualify as “fundamental.” But if the sponsor will consider as part of its prepublication review whether it wants to hold your new research results as trade secrets or otherwise proprietary information (even if your voluntary cooperation would be needed for it to do so), your research would no longer qualify as “fundamental.” As used in these regulations, it is the actual and intended openness of research results that primarily determines whether the research counts as “fundamental” and so is not subject to the EAR.

Question D(8): In determining whether research is thus open and therefore counts as “fundamental,” does it matter where or in what sort of institution the research is performed?

Answer: In principle, no. “Fundamental research” is performed in industry, federal laboratories, or other types of institutions, as well as in universities. The regulations introduce some operational presumptions and procedures that can be used both by those subject to the regulations and by those who administer them to determine with some precision whether a particular research activity is covered. Recognizing that common and predictable norms operate in different types of institutions, the regulations use the institutional locus of the research as a starting point for these presumptions and procedures. Nonetheless, it remains the type of research, and particularly the intent and freedom to publish, not the institutional locus, that identifies “fundamental research.”

Question D(9): I am doing research on high-powered lasers in the central basic-research laboratory of an industrial corporation. I am required to submit the results of my research for prepublication review before I can publish them or otherwise make them public. I would like to compare research results with a scientific colleague from Vietnam and discuss the results of the research with her when she visits the United States. Do I need a license to do so?

Answer: You probably do need a license. However, if the only restriction on your publishing any of that information is a prepublication review solely to ensure that publication would compromise no patent rights or proprietary information provided by the company to the researcher, your research may be considered “fundamental research,” in



which case you may be able to share information because it is not subject to the EAR. Note that the information will be subject to the EAR if the prepublication review is intended to withhold the results of the research from publication.

Question D(10): Suppose I have already cleared my company's review process and am free to publish all the information I intend to share with my colleague, though I have not yet published?

Answer: If the clearance from your company means that you are free to make all the information publicly available without restriction or delay, the information is not subject to the EAR.

Question D(11): I work as a researcher at a government-owned, contractor-operated research center. May I share the results of my unpublished research with foreign nationals without concern for export controls under the EAR?

Answer: That is up to the sponsoring agency and the center's management. If your research is designated "fundamental research" within any appropriate system devised by them to control release of information by scientists and engineers at the center, it will be treated as such by the Commerce Department, and the research will not be subject to the EAR. Otherwise, you would need to obtain a license or qualify for a License Exception, except to publish or otherwise make the information public.

#### Section E: Federal Contract Controls.

Question E(1): In a contract for performance of research entered into with the Department of Defense (DoD), we have agreed to certain national security controls. DOD is to have ninety days to review any papers we proposed before they are published and must approve assignment of any foreign nationals to the project. The work in question would otherwise qualify as "fundamental research." Is the information arising during or resulting from this sponsored research subject to the EAR?

Answer: Any export or reexport of information resulting from government-sponsored research that is inconsistent with contract controls you have agreed to will not qualify as "fundamental research," and any such export or reexport would be subject to the EAR. Any such export or reexport that is consistent with the controls will continue to be eligible for export and reexport as "fundamental research." Thus, if you abide by the specific controls you have agreed to, you need not be concerned about violating the EAR. If you violate those controls and export or reexport information as "fundamental research," you may subject yourself to the sanctions provided for under the EAR, including criminal sanctions, in addition to administrative and civil penalties for breach of contract under other law.

Question E(2): Do the Export Administration Regulations restrict my ability to publish the results of my research?



Answer: The Export Administration Regulations are not the means for enforcing the national security controls you have agreed to. If such a publication violates the contract, you would be subject to administrative, civil, and possible criminal penalties under other law.

#### Section F: Commercial Consulting.

Question F(1): I am a professor at a U.S. university, with expertise in design and creation of submicron devices. I have been asked to be a consultant for a “third-world” company that wishes to manufacture such devices. Do I need a license to do so?

Answer: Quite possibly you do. Application abroad of personal knowledge or technical experience acquired in the United States constitutes an export of that knowledge and experience that is subject to the Export Administration Regulations. If any part of the knowledge or experience you export or reexport deals with technology that requires a license under the EAR, you will need to obtain a license or qualify for a License Exception.

#### Section G: Software.

Question G(1): Is the export or reexport of software in machine-readable code subject to the EAR when the source code for such software is publicly available?

Answer: If the source code of a software program is publicly available, then the machine-readable code compiled from the source code is software that is publicly available and therefore not subject to the EAR.

Question G(2): Is the export or reexport of software sold at a price that does not exceed the cost of reproduction and distribution subject to the EAR?

Answer: Software in machine readable code is publicly available if it is available to a community at a price that does not exceed the cost of reproduction and distribution. Such reproduction and distribution costs may include variable and fixed allocations of overhead and normal profit for the reproduction and distribution functions either in your company or in a third-party distribution system. In your company, such costs may not include recovery for development, design, or acquisition. In this case, the provider of the software does not receive a fee for the inherent value of the software.

Question G(3): Is the export or reexport of software subject to the EAR if it is sold at a price BXA concludes in a classification letter to be sufficiently low so as not to subject it to the EAR?

Answer: In response to classification requests, BXA may choose to classify certain software as not subject to the EAR even though it is sold at a price above the costs of reproduction and distribution, as long as the price is nonetheless sufficiently low to qualify for such a classification in the judgment of BXA.



#### Section H: Availability in a Public Library.

Question H(1): Is the export or reexport of information subject to the EAR if it is available in a library and sold through an electronic or print service?

Answer: Electronic and print services for the distribution of information may be relatively expensive in the marketplace because of the value vendors add in retrieving and organizing information in a useful way. If such information is also available in a library — itself accessible to the public — or has been published in any way, that information is “publicly available” for those reasons, and the information itself continues not to be subject to the EAR even though you access the information through an electronic or print service for which you or your employer pay a substantial fee.

Question H(2): Is the export or reexport of information subject to the EAR if the information is available in an electronic form in a library at no charge to the library patron?

Answer: Information available in an electronic form at no charge to the library patron in a library accessible to the public is publicly available information, even though the library pays a substantial subscription fee for the electronic retrieval service.

Question H(3): Is the export or reexport of information subject to the EAR if the information is available in a library and sold for more than the cost of reproduction and distribution?

Answer: Information from books, magazines, dissertations, papers, electronic data bases, and other information available in a library that is accessible to the public is not subject to the EAR. This is true even if you purchase such a book at more than the cost of reproduction and distribution. In other words, such information is “publicly available” even though the author makes a profit on your particular purchase for the inherent value of the information.

#### Section I: Miscellaneous.

Question I(1): Is the export or reexport of information subject to the EAR if the information is not in a library or published, but is sold at a price that does not exceed the cost of reproduction and distribution?

Answer: Information that is not in a library accessible to the public and that has not been published in any way may nonetheless become “publicly available” if you make it available to a community of persons and if you sell it at no more than the cost of reproduction and distribution. Such reproduction and distribution costs may include variable and fixed cost allocations of overhead and normal profit for the reproduction and distribution functions, either in your company or in a third party distribution system. In your company, such costs may not include recovery for development, design, or



acquisition costs of the technology or software. The reason for this conclusion is that the provider of the information receives nothing for the inherent value of the information.

Question I(2): Is the export or reexport of information contributed to an electronic bulletin board subject to the EAR?

Answer: Assume each of the following:

1. Information is uploaded to an electronic bulletin board by a person who is the owner or originator of the information;
2. That person does not charge a fee to the bulletin board administrator or the subscribers of the bulletin board; and
3. The bulletin board is available for subscription to any subscriber in a given community, regardless of the cost of subscription.

Such information is “publicly available” and therefore not subject to the EAR even if it is not elsewhere published and is not in a library. The reason for this conclusion is that the bulletin board subscription charges or line charges are for distribution exclusively, and the provider of the information receives nothing for the inherent value of the information.

Question I(3): Is the export or reexport of patented information fully disclosed on the public record subject to the EAR?

Answer: Information, to the extent it is disclosed on the patent record open to the public, is not subject to the EAR, even though you may use such information only after paying a fee in excess of the costs of reproduction and distribution. In this case, the seller does receive a fee for the inherent value of the technical data; however, the export or reexport of the information is nonetheless not subject to the EAR because any person can obtain the technology from the public record and further disclose or publish the information. For that reason, it is impossible to impose export controls that deny access to the information.

# Exhibit D

## Potential Penalties for Violations

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### **Criminal Sanctions**

Laboratory: Maximum sentence is \$1,000,000 if (a) there is a “willful” violation or (b) there is a failure by a licensee to disclose knowledge of a diversion to a foreign country for military or intelligence purposes. Otherwise, the maximum for a “knowing” violation is the higher of \$50,000 or five times the value of the export(s).

Individuals: Maximum sentence is \$250,000 and imprisonment of up to 10 years if there (a) is a “willful” violation or (b) there is a failure by a licensee to disclose knowledge of a diversion to a communist country for military or intelligence purposes. Otherwise, the maximum for a “knowing” violation is \$50,000 and up to five years imprisonment.

The Comprehensive Crime Control Act gives a court the authority to increase the Export Administration Act’s (EAA’s) criminal penalties substantially.

### **Civil Penalties (Personal Liability)**

For violations of national security controls, the maximum civil penalty is \$100,000. For violations of other provisions of the act or regulations, the maximum penalty is \$10,000. Penalties are imposed through administrative proceedings within the Department of Commerce or by negotiated settlement.

### **Administrative Sanctions**

Denial Orders: Denial Orders are administrative sanctions that have the effect of denying the sanctioned party any U.S. export privileges and any access to U.S.-origin goods and technology, from any source, for a specified period of time or indefinitely. The laboratory requester is responsible for assuring that all consignees have been checked against the Denied Persons List currently in effect. It is a violation of the Export Administration Regulations for any person or firm anywhere in the world to supply any U.S.-origin goods or technology to, or finance or otherwise service or participate in, any transaction in which a denial order party may have an interest or from which that party may benefit contrary to the terms of the denial order.

Seizure: Commodities or technical data which have been, are being, or are intended to be exported or shipped from or taken out of the United States. in violation of the EAA or of any regulation, or license issued under the EAA. are subject to being seized and detained, as are the vessels, vehicles, and aircraft carrying such commodities or technical data. Seized commodities or technical data are subject to forfeiture.

# Exhibit E

## Estimated Export Processing Time Frames

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Request	Processing Time (days)
Export Commodity Classification Number Determination	15–30
Exports under a Department of Commerce License Exception	15–30
Exports Needing a Department of Commerce License	30–90
Exports of Nuclear Material or Equipment under a Nuclear Regulatory Commission General License Requiring DOE Approval	30–90
Exports of Nuclear Material or Equipment that Fall under a Nuclear Regulatory Commission General License Requiring DOE Approval, and for which NAC Assigns a Contract Number	30–90
Exports of Nuclear Material or Equipment that Requires a Nuclear Regulatory Commission License	30–90

## Exhibit F

# Forms Referred to in the Guide

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Contact the Export Control Coordinator at Argonne-East on 2-2701 or the Export Control Liaison at Argonne-West on 3-7495 to acquire non-stock forms.

1. Shipping Order (SO) (ANL-126C)
2. Request for Unclassified Visit or Assignment by a Foreign National, Form 473
3. Nuclear Material Shipment Worksheet, Form SPM 60
4. Shipping Order, Nuclear Material (ANL-126A) – obtain from Special Materials Group
5. Customs Forms PS2976 and PS2976A – Export Mailings – obtain from ANL Post Office
6. DOE Form 4420.2, Loan of High Risk Property – obtain from Property
7. DOC Shipper's Export Declaration (SED) Form 7525-V
8. Shipper's Security Endorsement – obtain from Shipping
9. Straight Bill of Lading – obtain from Shipping
10. Shipper's Declaration for Dangerous Goods – obtain from Shipping
11. Export License Request Form BXA 748P
12. Statement of Ultimate Consignee BXA Form 711
13. Publication Release Form (ANL-330)
14. TMP Confirmation Form
15. GOV Confirmation Form



# Exhibit G

## Checklist for Nuclear Controls-Related Equipment

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*If you answer "Yes" to any of these questions, please contact the Export Control Coordinator at Argonne-East on 2-2701 or the Export Control Liaison at Argonne-West on 3-7495.*

### A) Unsafeguarded Nuclear Activities.

Unsafeguarded means that there is no obligation on the part of the receiving country to accept International Atomic Energy Agency (IAEA) safeguards at the relevant facility or installation that contains any source or special fissionable material (regardless of whether or not it contains such material at the time of export) or where any such obligation is not met.

Based on these definitions, are you performing research on, or development, design, manufacture, construction, operation, or maintenance of:

1. Yes \_\_\_ No \_\_\_ A nuclear reactor
2. Yes \_\_\_ No \_\_\_ A critical facility
3. Yes \_\_\_ No \_\_\_ A facility for the fabrication of nuclear fuel
4. Yes \_\_\_ No \_\_\_ A facility for the conversion of nuclear material from one form to another
5. Yes \_\_\_ No \_\_\_ A storage installation
6. What technology and assistance will you provide?

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**B) Safeguarded and Unsafeguarded Nuclear Activities.**

Are you involved in nuclear fuel cycle activities, including research on development, design, manufacture, construction, operation or maintenance of any of the following facilities:

1. Yes ☐ No ☐ Facilities for the chemical processing of irradiated special nuclear or source material
2. Yes ☐ No ☐ Facilities for the production of heavy water
3. Yes ☐ No ☐ Facilities for the separation of isotopes of source and special nuclear material
4. Yes ☐ No ☐ Facilities for the fabrication of nuclear reactor fuel containing plutonium
5. What technology and assistance will you provide?

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**C) Does this activity require an NRC license? Yes ☐ No ☐ Don't Know ☐**

If you check "Yes" or "Don't Know," contact Special Materials on 2-7776 for assistance.

# Exhibit H

## Checklists for Missile Technology and Chemical & Biological Weapons

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*If you answer "Yes" to any of these questions, please contact the Export Control Coordinator at ANL-East on 2-2701 or the Export Control Liaison at ANL-West on 3-7495*

### A) Missile Technology Checklist.

1. Yes \_\_\_ No \_\_\_ Will the items requested for export be used in the design, development, production, or use of missiles?
2. Yes \_\_\_ No \_\_\_ Is the end-user of the items involved in any activities associated with the development of missiles?
3. Yes \_\_\_ No \_\_\_ Does the end-user have any direct or indirect assistance in the design, fabrication, operation, or maintenance of rocket systems (including ballistic missile systems, space launch vehicles, and sounding rockets) or in unmanned air vehicle systems (including cruise missile systems, target drones, remotely piloted vehicles, and reconnaissance drones)?
4. What technology and assistance will you provide?

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### B) Chemical & Biological Weapons Screen.

Has the end-user:

1. Yes \_\_\_ No \_\_\_ N/A \_\_\_ Provided evasive responses or been reluctant to provide an adequate explanation concerning the chemicals or biological agents to be produced with the equipment/materials requested for export or the end-use of the chemicals or biological agents produced with the equipment/materials?
2. Yes \_\_\_ No \_\_\_ N/A \_\_\_ Been reluctant to explain sufficiently the chemical raw materials or biological agents to be used with the equipment/materials requested for export?
3. Yes \_\_\_ No \_\_\_ N/A \_\_\_ Asked for quantities excessive for the production capability of the end-user?



4. Yes \_\_\_ No \_\_\_ N/A \_\_\_ Made requests for excessive safety/security devices/measures in light of the stated end-use, or the end-user's lack of familiarity with appropriate safety/security measures?
5. Yes \_\_\_ No \_\_\_ N/A \_\_\_ Made requests to complete a partly finished project and/or will not provide license authorizations obtained for the part of the project already completed?
6. Yes \_\_\_ No \_\_\_ N/A \_\_\_ Requested modification of a plant or equipment item in an existing or planned facility that changes production capability significantly and could make the facility more suitable for the manufacture of chemical weapons, chemical weapon precursors, or biological agents and weapons?
7. Yes \_\_\_ No \_\_\_ N/A \_\_\_ Requested models of equipment or containers made or lined with nickel, hastelloy, monel, or other high nickel content or which are airtight beyond the normal requirements for the stated end-use, especially when less expensive models are appropriate for the end-use?
8. Yes \_\_\_ No \_\_\_ N/A \_\_\_ Requested excessive confidentiality concerning final destination or details on equipment, materials, or technical data to be delivered?
9. Yes \_\_\_ No \_\_\_ N/A \_\_\_ Requested that the items be installed in an area under unusual strict security control (such areas may include but are not limited to an area close to a military-related facility, to which access is severely restricted; science and technology parks; locations that are isolated from major population centers); or an atypical location in light of the character of the equipment (e.g., milk pasteurization equipment that is not being installed near a dairy or baby food distribution/packaging center)?
10. Yes \_\_\_ No \_\_\_ N/A \_\_\_ Refused contractor or subcontractor personnel access to parts of the plant other than those involved in the contract?
11. Yes \_\_\_ No \_\_\_ N/A \_\_\_ Divided the contract for the construction or renovation of a plant without furnishing adequate information about the complete scope of the project, including the final destination and proposed use of the plant?

## Exhibit I

# Sample Letter of Assurance

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[Must Be Written on Recipient's Letterhead]

To: ANL Contact

The technology and commodities (*commodity/technology name*) to be furnished under the Argonne National Laboratory Proposal P-xxxxxx, "*Name of Project/Program*," may be subject to U.S. export laws and regulations and are certainly governed by reexport laws and regulations. The *Recipient Organization* agrees to use the *commodity/technology* for fundamental research purposes only, solely at the site of the *Recipient Organization* located in the *City, Country*. We agree that we will not transport the *commodity/technology* to any other facility or site. We agree to comply with the appropriate U.S. export/reexport laws and regulations, including complying with the terms of any U.S. export control license or regulations authorizing Argonne to furnish the *commodity/technology* to the *Recipient Organization*, as brought to our attention by Argonne.

Unless authorized by appropriate U.S. government license or regulations, we agree not to export, directly or indirectly, the *commodity/technology* provided by Argonne to any of the following countries: Algeria, Armenia, Azerbaijan, Belarus, Cuba, Georgia, India, Iran, Iraq, Israel, Kazakhstan, Kyrgyzstan, Libya, Moldova, North Korea, Pakistan, People's Republic of China, Russia, Sudan, Syria, Tajikistan, Taiwan, Turkmenistan, Ukraine, and Uzbekistan.

We also acknowledge that these obligations will survive the termination of any agreement under which the *commodity/technology* is provided to the *Recipient Organization*.

Signed by appropriate person from the *Recipient Organization*

## Exhibit J

# Export Control Information for Hosts to Foreign Visitors

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If you host a visit, have discussions, communicate by mail, telephone, electronic mail, or facsimile; through shipment; via hand-carried materials; as a result of presentations; over the web; and/or by any other means with foreign nationals, please remember that you are responsible for ensuring that all appropriate technical data, software, and/or commodities to which your visitors will have access is properly protected in accordance with the export control rules and regulations of the United States. Pay special attention to equipment and/or technologies that are considered dual-use and that could be used in conjunction with nuclear proliferation or chemical and/or biological weapons, as well as to items that could negatively affect national security.

An export can occur through a variety of means, including **oral communications**, **written documentation**, **U.S. computer software**, and **visual inspection** of U.S. facilities and equipment by foreign nationals. Of particular concern is the visual inspection by foreign nationals of areas not generally accessible to U.S. citizens (the public). To ensure that technical data, software, and/or commodities are properly protected in accordance with export control rules and regulations, you must review these areas before the visit by the foreign national. Please complete the following actions before allowing the foreign national access to an Argonne facility or technology:

1. *Review the technologies to be discussed with the foreign nationals for compliance with export requirements and verify that the technologies do not appear on the DOE Sensitive Subjects or ANL Sensitive Technologies list (See Export Controls Web page). Technical data consist of specific information required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance, or modification of the technologies in question. This information includes technical data in the form of blueprints, plans, diagrams, models, formulae, tables, engineering designs and specifications, manuals, and instructions written or recorded on other media or on such devices as disk, tape, and read-only memories.*

In general, only technology that is not classified or sensitive, or that is already publicly available (in other words, Argonne or DOE has no vested interest in licensing the technology or applying for patent rights), or marketing information (general information that would be provided to a potential investor or potential partner) can be disclosed to a foreign national. While much of the work in which Argonne and its employees engage in furtherance of its basic research and technology development mission is excepted from U.S. export control regulations, knowledge of this compliance with export controls is important to the Laboratory, as well as to every U.S. citizen, for economic and national security reasons. If the



purpose of the visit is part of a previous agreement or contract that has been approved for export, only *approved* technical data, software, and/or commodities can be disclosed, and only to the foreign nationals who have been approved. Often, companies will be based in one country, but will have employees from a variety of countries. For example, if you are contracted with a Kazak facility, and you are required to host a representative from that facility who is actually a foreign national from Russia and not a permanent U.S. resident, the release of particular information or technology may be considered an export to Russia. Likewise, if you are contracted with a firm incorporated in the United States, but you are required to host a representative from that U.S. firm who is actually a foreign national from France and not a U.S. permanent resident, the release of particular information or technology may be considered an export to France.

If the purpose of the visit is to sign an agreement that includes the transfer of technical data, software, and/or commodities to a foreign national, please ensure that the export has been approved. A nondisclosure agreement signed by the foreign national(s) does not allow an export of technology, and Department of Commerce, Department of Energy, Department of State, Department of Treasury, and Nuclear Regulatory Commission regulations still govern the visit.

2. *Review all software to which the foreign national will have access for compliance with export regulations. Many software packages are export controlled in some fashion (even some commercial packages). Almost all commercial software packages, however, can be used by foreign nationals under a license exemption, except if they are from a sensitive or embargoed country.*
3. *Assess all commodities that are going to be viewed or used by the foreign national to determine if allowing the foreign national access to the area would constitute an export.*

In general, limited viewing of a commodity will not promote a transfer of technology; however, in cases where details are evident, such as vessel size, operating temperatures and pressures, or other specific configuration details, an export can occur. Detailed photographs, technical manuals, and specifications on commodities should not be given to foreign nationals unless a review has been completed, even for commercial equipment.

Verify that the technology, information, and/or commodities fall into one or more of the following categories prior to transfer:

- Fundamental Research *and* Information Resulting from Fundamental Research
- Published Information and Software (Publicly Available)



- Education Information
- Patent Applications

Expanded definitions of these categories are contained in the Argonne Guide to Exporting.

- Presentations and discussions must be limited to only those topics that are not related to controlled items or technologies unless they are in the public domain. Further elaboration, or additional details, may be considered an export of technologies and need an export license prior to release.

Contact the Export Control Coordinator at Argonne-East on extension 2-2701 or the Export Control Liaison at Argonne-West on extension 3-7495 for assistance.



# Exhibit K

## Export Control Information for Foreign Travel

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The United States is committed to encourage technology exchanges that are consistent with U.S. national security and nuclear nonproliferation objectives. The Laboratory must abide by all export control laws and regulations. You and the Laboratory can be held liable for improperly transferring controlled technologies. This document, while not comprehensive, is intended to provide a reminder of your responsibilities relevant to travelling abroad. You can find complete guidance in the Argonne Guide to Exporting through the [Export Controls](#) link at the bottom of the ANL Homepage.

To ensure that you do not run the risk of illegally exporting sensitive information or technology when travelling abroad, keep the following guidelines in mind:

- An export can occur through a variety of means beyond the obvious shipment of physical items, including **oral communications**, **written documentation**, or **transfer** of U.S. computer software to foreign nationals. Technology transfers to foreign nationals while they are visiting the United States or other countries or while you are visiting their country are considered exports.
- If your presentations or discussions will provide information not already publicly available concerning the development, production, or use of export controlled material, equipment, or technologies, you may require an export license. If you are not sure, contact the Export Control Coordinator (ECC)<sup>1</sup>. The ECC can help you determine if you need a license and help you acquire one if needed.
- If you do not obtain an export license prior to your trip, verify that the technology, information, and/or commodities fall into one or more of the following categories prior to transfer:
  - Fundamental Research and Information Resulting from Fundamental Research
  - Published Information and Software (Publicly Available)

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<sup>1</sup> Contact the Export Control Coordinator at Argonne-East, on extension 2-2701, or the Export Control Liaison at Argonne-West, on extension 3-7495, for assistance.



- Education Information
- Patent Applications

Additional Tips:

- Whenever possible, personal items should be shipped separately from Laboratory-owned property.
- If you hand-carry Laboratory property, retain all shipping-related paper work with you both when departing from and returning to the United States. The ECC will help you acquire and complete the necessary paper work.
- Backup important laptop data and carry separately from your laptop when returning from foreign travel.

# Appendix:

## Steps for Using the EAR

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### §732.1

#### STEPS OVERVIEW

##### *(a)(1) Introduction*

In this part, references to the EAR are references to 15 CFR chapter VII, subchapter C. This part is intended to help you determine your obligations under the EAR by listing logical steps in §732.2 through §732.5 of this part that you can take in reviewing these regulations. A flow chart describing these steps is contained in Supplement No. 1 to part 732. By cross-references to the relevant provisions of the EAR, this part describes the suggested steps for you to determine applicability of the following:

(i) The scope of the EAR (part 734 of the EAR);

(ii) Each of the general prohibitions (part 736 of the EAR);

(iii) The License Exceptions (part 740 of the EAR); and

(iv) Other requirements such as clearing your export with the U.S. Customs Service, keeping records, and completing and documenting license applications.

(2) These steps describe the organization of the EAR, the relationship among the provisions of the EAR, and the appropriate order for you to consider the various provisions of the EAR.

##### *(b) Facts about your transaction*

The following five types of facts determine your obligations under the EAR and will be of help to you in reviewing these steps:

**(1) What is it?** What an item is, for export control purposes, depends on its *classification*, which is its place on the Commerce Control List (see part 774 of the EAR).

**(2) Where is it going?** The *country of ultimate destination* for an export or reexport also determines licensing requirements (see parts 738 and 774 of the EAR concerning the Country Chart and the Commerce Control List).

**(3) Who will receive it?** The *ultimate end-user* of your item cannot be a bad end-user. See General Prohibition Four (Denial Orders) in §736.2(b)(4) and parts 744 and 764 of the EAR for a reference to the list of persons you may not deal with.

**(4) What will they do with it?** The *ultimate end-use* of your item cannot be a bad end-use. See General Prohibition Five (End-Use End-User) in §736.2(b)(5) and part 744 of the EAR for general end-use and end-user restrictions.

**(5) What else do they do?** *Conduct* such as contracting, financing, and freight forwarding in support of a proliferation project (as described in §744.6 of the EAR) may prevent you from dealing with someone.

##### *(c) Are your items and activities subject to the EAR?*

You should first determine whether your commodity, software, or technology is subject to the EAR (see part 734 of the EAR concerning scope), and Steps 1 through 6 help you do that. For exports from the United States, only Steps 1



and 2 are relevant. If you already know that your item or activity is subject to the EAR, you should go on to consider the ten general prohibitions in part 736 of the EAR. If your item or activity is not subject to the EAR, you have no obligations under the EAR and may skip the remaining steps.

***(d) Does your item or activity require a license under one or more of the ten general prohibitions?***

**(1) Brief summary of the ten general prohibitions.** The general prohibitions are found in part 736 of the EAR and referred to in these steps. They consist, very briefly, of the following:

(i) General Prohibition One (Exports and Reexports): Export and reexport of controlled items to listed countries.

(ii) General Prohibition Two (Parts and Components Reexports): Reexport and export from abroad of foreign-made items incorporating more than a *de minimis* amount of controlled U.S. content.

(iii) General Prohibition Three (Foreign-produced Direct Product Reexports): Reexport and export from abroad of the foreign-produced direct product of U.S. technology and software.

(iv) General Prohibition Four (Denial Orders): Engaging in actions prohibited by a denial order.

(v) General Prohibition Five (End-Use End-User): Export or reexport to prohibited end-user or end-users.

(vi) General Prohibition Six (Embargo): Export or reexport to embargoed destinations.

(vii) General Prohibition Seven (U.S. Person Proliferation Activity): Support of proliferation activities.

(viii) General Prohibition Eight (In-Transit): In-transit shipments and items to be unladen from vessels and aircraft.

(ix) General Prohibition Nine (Orders, Terms and Conditions): Violation of any orders, terms, or conditions.

(x) General Prohibition Ten (Knowledge Violation to Occur): Proceeding with transactions with knowledge that a violation has occurred or is about to occur.

**(2) Controls on items on the Commerce Control List (CCL).** If your item or activity is subject to the EAR, you should determine whether any one or more of the ten general prohibitions require a license for your export, reexport, or activity. Steps 7 through 11 refer to classification of your item on the Commerce Control List (CCL) (part 774 of the EAR) and how to use the Country Chart (Supplement No. 1 to part 738 of the EAR) to determine whether a license is required based upon the classification of your item. These steps refer to General Prohibitions One (Exports and Reexports), Two (Parts and Components Reexports), and Three (Foreign-Produced Direct Product Reexports) for all countries except: Cuba, Iran, Iraq, Libya, and North Korea. For these countries, you may skip Steps 7 through 11 and go directly to Step 12.

**(3) Controls on activities.** Steps 12 through 18 refer to General Prohibitions Four through Ten. Those general prohibitions apply to all items subject to the EAR, not merely those items listed on the CCL in part 774 of the EAR. For example, they refer to the general prohibitions for persons denied export privileges, prohibited end-uses and end-users, embargoed countries (e.g., Cuba, Iran, Iraq, Libya, and North Korea), prohibited activities of U.S. persons in support of proliferation of weapons of mass destruction, prohibited unloading of shipments, compliance with orders, terms and conditions, and activities when a violation has occurred or is about to occur.



## §732.2

**(4) General prohibitions.** If none of the ten general prohibitions applies, you should skip the steps concerning License Exceptions and for exports from the United States, review Steps 27 through 29 concerning Shipper's Export Declarations to be filed with the U.S. Customs Service, Destination Control Statements for export control documents, and recordkeeping requirements.

***(e) Is a License Exception available to overcome the license requirement?***

If you decide by reviewing the CCL in combination with the Country Chart that a license is required for your destination, you should determine whether a License Exception will exempt you from that requirement. Steps 20 through 24 help you determine whether a License Exception is available. Note that generally License Exceptions are not available to overcome General Prohibitions Four through Ten. However, selected License Exceptions for embargoed destinations are specified in part 746 of the EAR and License Exceptions for short supply controls are specified in part 754 of the EAR. If a License Exception is available and the export is from the United States, you should review Steps 26 through 28 concerning Shipper's Export Declarations to be filed with the U.S. Customs Service, Destination Control Statements for export control documents and recordkeeping requirements. If a License Exception is not available, go on to Steps 25 through 29.

***(f) How do you apply for a license?***

If you must file a license application, you should review the requirements of part 748 of the EAR as suggested by Step 26. Then you should review Steps 27 through 29 concerning Shipper's Export Declarations to be filed with the U.S. Customs Service, Destination Control Statements for export control documents, and record keeping requirements.

### **Steps regarding scope of the EAR**

Steps 1 through 6 are designed to aid you in determining the scope of the EAR. A flow chart describing these Steps is contained in Supplement No. 2 to part 732.

***(a) Step 1: Items subject to the exclusive jurisdiction of another Federal agency***

This step is relevant for both exports and reexports. Determine whether your item is subject to the exclusive jurisdiction of another Federal Agency as provided in §734.3 of the EAR.

**(1)** If your item is subject to the exclusive jurisdiction of another federal agency, comply with the regulations of that agency. You need not comply with the EAR and may skip the remaining steps.

**(2)** If your item is not subject to the exclusive jurisdiction of another federal agency, then proceed to Step 2 in paragraph (b) of this section.

***(b) Step 2: Publicly available technology and software***

This step is relevant for both exports and reexports. Determine if your technology or software is publicly available as defined and explained at part 734 of the EAR. Supplement No. 1 to part 734 of the EAR contains several practical examples describing publicly available technology and software that is outside the scope of the EAR. The examples are illustrative, not comprehensive. Note that encryption software controlled for EI reasons under ECCN 5D002 on the Commerce Control List (refer to Supplement No.1 to Part 774 of the EAR) shall be subject to the EAR even if publicly available. Accordingly, the provisions of the EAR concerning the public availability of items are not applicable to



encryption items controlled for AEI@ reasons under ECCN 5D002.

(1) If your technology or software is publicly available, and therefore outside the scope of the EAR, you may proceed with the export or reexport if you are not a U.S. person subject to General Prohibition Seven. If you are a U.S. person, go to Step 15 at §732.3(j) of this part. If you are a U.S. person and General Prohibition Seven concerning proliferation activity of U.S. persons does not apply, then you may proceed with the export or reexport of your publicly available technology or software. Note that all U.S. persons are subject to the provisions of General Prohibition Seven.

(2) If your technology or software is not publicly available and you are exporting from the United States, skip to the Step 7 in §732.3(b) of this part concerning the general prohibitions.

(3) If you are exporting items from a foreign country, you should then proceed Step 3 in paragraph (c) of this section and the other steps concerning the scope of the EAR.

**(c) Step 3: Reexport of U.S.-origin items**

This step is appropriate only for reexporters. For an item in a foreign country, you should determine whether the item is of U.S.-origin. If it is of U.S.-origin, skip to Step 7 in §732.3(b) of this part. If it is not of U.S.-origin, then proceed to Step 4 in paragraph (d) of this section.

**(d) Step 4: Foreign-made items incorporating less than the *de minimis* level of U.S. parts, components, and materials**

This step is appropriate only for items that are made outside the United States and not currently in the U.S. Note that encryption items controlled for EI reasons under ECCN 5A002 or ECCN 5D002 on the Commerce Control List (refer to Supplement No.1 to Part 774 of the EAR) shall be subject to the EAR even if they incorporate

less than the *de minimis* level of U.S. content. Accordingly, the provisions of the EAR concerning *de minimis* levels are not applicable to encryption items controlled for AEI@ reasons under ECCNs 5A002, 5D002, or 5E002.

(1) For an item made in a foreign country, you should determine whether controlled U.S.-origin parts, components or materials are incorporated as provided in §734.4 of the EAR. Also, determine the value of the U.S.-origin controlled content as provided in Supplement No. 2 to part 734 of the EAR.

(2) To determine the value of the U.S.-origin controlled content, you should classify the U.S.-origin content on the CCL, determine those items that would require a license from BXA for reexport to the ultimate destination of the foreign-made product if such parts, components, or materials were reexported to that destination in the form received, and divide the total value of the controlled U.S. parts, components, and materials incorporated into the foreign-made item by the sale price of the foreign-made item.

(3) If no U.S. parts, components or materials are incorporated or if the incorporated U.S. parts, components, and materials are below the *de minimis* level described in §734.4 of the EAR, then the foreign-made item is not subject to the EAR by reason of the parts and components rule, the classification of a foreign-made item is irrelevant in determining the scope of the EAR, and you should skip Step 4 and go on to consider Step 6 regarding the foreign-produced direct product rule.

(4) If controlled parts, components, or materials are incorporated and are above the *de minimis* level, then you should go on to Step 5.

**(e) Step 5: Foreign-made items incorporating more than the *de minimis* level of U.S. parts, components, or materials**



This step is appropriate only for foreign-made items incorporating certain U.S. parts. If the incorporated U.S. parts exceed the relevant *de minimis* level, then your export from abroad is subject to the EAR. You then should skip to Step 7 at §732.3 of this part and consider the steps regarding all other general prohibitions, License Exceptions, and other requirements.

***(f) Step 6: Foreign-made items produced with certain U.S. technology for export to specified destinations***

This step is appropriate for foreign-made items in foreign countries.

**(1)** If your foreign-produced item is described in an entry on the CCL and the Country Chart requires a license to your export or reexport destination for national security reasons, you should determine whether your item is subject to General Prohibition Three (Foreign-Produced Direct Product Reexports) (§736.2(b)(3) of the EAR). Your item is subject to the EAR if it is captured by General Prohibition Three (Foreign-Produced Direct Product Reexports), and that prohibition applies if your transaction meets each of the following conditions:

(i) *Country scope of prohibition.* Your export or reexport destination for the direct product is Cuba, North Korea, Libya, or a destination in Country Group D:1 (see Supplement No. 1 to part 740 of the EAR) (reexports of foreign-produced direct products exported to other destinations are not subject to General Prohibition Three);

(ii) *Scope of technology or software used to create direct products subject to the prohibition.* Technology or software that was used to create the foreign-produced direct product, and such technology or software that was subject to the EAR and required a written assurance as a supporting document for a license or as a precondition for the use of License Exception TSR in §740.6 of the EAR (reexports of

foreign-produced direct products created with other technology and software are not subject to General Prohibition Three); and

(iii) *Scope of direct products subject to the prohibition.* The foreign-produced direct products are subject to national security controls as designated on the proper ECCN of the Commerce Control List in part 774 of the EAR (reexports of foreign-produced direct products not subject to national security controls are not subject to General Prohibition Three).

**(2) License Exceptions.** Each License Exception described in part 740 of the EAR overcomes this General Prohibition Three if all terms and conditions of a given License Exception are met by the exporter or reexporter.

**(3) Subject to the EAR.** If your item is captured by the foreign-produced direct product control at General Prohibition Three, then your export from abroad is subject to the EAR. You should next consider the steps regarding all other general prohibitions, License Exceptions, and other requirements. If your item is not captured by General Prohibition Three, then your export from abroad is not subject to the EAR. You have completed the steps necessary to determine whether your transaction is subject to the EAR, and you may skip the remaining steps. Note that in summary, items in foreign countries are subject to the EAR when they are:

(i) U.S.-origin commodities, software and technology unless controlled for export exclusively by another Federal agency or unless publicly available;

(ii) Foreign-origin commodities, software, and technology that are within the scope of General Prohibition Two (Parts and Components Reexports), or General Prohibition Three (Foreign-Produced Direct Product Reexports). (However, such foreign-made items are also outside the scope of the EAR if they are controlled for export exclusively by another Federal Agency or publicly available.)



### §732.3

#### Steps regarding the ten general prohibitions

##### *(a) Introduction*

If your item or activity is subject to the scope of the EAR, you should then consider each of the ten general prohibitions listed in part 736 of the EAR. General Prohibitions One (Exports and Reexports), Two (Parts and Components Reexports), and Three (Foreign-Produced Direct Product Reexports) (§736.2(b)(1), (2), and (3) of the EAR) are product controls that are shaped and limited by parameters specified on the CCL and Country Chart. General Prohibitions Four through Ten are prohibitions on certain activities that are not allowed without authorization from BXA, and these prohibitions apply to all items subject to the EAR unless otherwise specified (§736.2(b)(4) through (10) of the EAR).

##### *(b) Step 7: Classification*

(1) You should classify your items in the relevant entry on the CCL, and you may do so on your own without the assistance of BXA. You are responsible for doing so correctly, and your failure to correctly classify your items does not relieve you of the obligation to obtain a license when one is required by the EAR.

(2) You have a right to request the applicable classification of your item from BXA, and BXA has a duty to provide that classification to you. For further information on how to obtain classification assistance from BXA, see part 748 of the EAR.

(3) For items subject to the EAR but not listed on the CCL, the proper classification is EAR99. This number is a “basket” for items not specified under any CCL entry and appears at the end of each Category on the CCL.

##### *(c) Step 8: Country of ultimate destination*

You should determine the country of ultimate destination. The country of destination determines the applicability of several general prohibitions, License Exceptions, and other requirements. Note that part 754 of the EAR concerning short supply controls is self-contained and is the only location in the EAR that contains both the prohibitions and exceptions applicable to short supply controls.

##### *(d) Step 9: Reason for control and the Country Chart*

(1) **Reason for control and column identifier within the Export Control Classification Number (ECCN).** Once you have determined that your item is controlled by a specific ECCN, you must use information contained in the “License Requirements” section of that ECCN in combination with the Country Chart to decide whether a license is required under General Prohibitions One, Two, or Three to a particular destination. The CCL and the Country Chart are taken together to define these license requirements. The applicable ECCN will indicate the reason or reasons for control for items within that ECCN. For example, ECCN 6A007 is controlled for national security, missile technology, and anti-terrorism reasons.

(2) **Reason for control within the Country Chart.** With each of the applicable Country Chart column identifiers noted in the correct ECCN, turn to the Country Chart. Locate the correct Country Chart column identifier on the horizontal axis, and determine whether an “X” is marked in the cell next to the destination in question. Consult §738.4 of the EAR for comprehensive instructions on using the Country Chart and a detailed example.

(i) An “X” in the cell or cells for the relevant country and reason(s) for control column indicates that a license is required for General Prohibitions One (Exports and Reexports) in the





Form Received), Two (Parts and Components Reexports), and Three (Foreign-Produced Direct Product Reexports). (See §736.2(b)(1), (b)(2), and (b)(3) of the EAR).

(ii) If one or more cells have an “X” in the relevant column, a license is required unless you qualify for a License Exception described in part 740 of the EAR. If a cell does not contain an “X” for your destination in one or more relevant columns, a license is not required under the CCL and the Country Chart.

(iii) Additional controls may apply to your export. You must go on to steps 12 through 18 described in paragraphs (g) to (m) of this section to determine whether additional limits described in General Prohibition Two (Parts and Components Reexports) and General Prohibition Three (Foreign-Produced Direct Product Reexports) apply to your proposed transaction. If you are exporting an item from the United States, you should skip Step 10 and Step 11. Proceed directly to Step 12 in paragraph (g) of this section.

**(3) License requirements not on the Country Chart.** There are two instances where the Country Chart cannot be used to determine if a license is required. Items controlled for short supply reasons are not governed by the Country Chart. Part 754 of the EAR contains license requirements and License Exceptions for items subject to short supply controls. A limited number of ECCNs contained on the CCL do not identify a Country Chart column identifier. In these instances, the ECCN states whether a license is required and for which destinations. See §738.3(a) of the EAR for a list of the ECCNs for which you do not need to consult the Country Chart to determine licensing requirements.

**(4) Destinations subject to embargo provisions.** The Country Chart does not apply to Cuba, Iran, Iraq, Libya, and North Korea; and for those countries you should review the

embargo provisions at part 746 of the EAR and may skip this step concerning the Country Chart. For Angola, Bosnia-Herzegovina, Croatia, Rwanda, and Serbia and Montenegro the Country Chart provides for certain license requirements, and part 746 of the EAR provides additional requirements.

**(5) Items subject to the EAR but not on the CCL.** Items subject to the EAR that are not on the CCL are properly classified EAR99. For such items, you may skip this step and proceed directly with Step 12 in paragraph (g) of this section.

***(e) Step 10: Foreign-made items  
incorporating U.S.-origin items and the de  
minimis rule***

**(1) Parts and components rule.** The following considerations are appropriate for items abroad and are the same steps necessary to determine whether a foreign-made item incorporating U.S. parts, components, or materials is subject to the EAR. If your foreign-made item is described in an entry on the CCL and the Country Chart requires a license to your export or reexport destination, you should determine whether the controlled U.S.-origin commodities, software, or technology incorporated into the foreign-made item exceeds the *de minimis* level applicable to the ultimate destination of the foreign-made item, as follows:

(i) A 10% *de minimis* level to embargoed and terrorist-supporting countries; or

(ii) A 25% *de minimis* level to all other countries.

**(2) Guidance for calculations.** For guidance on how to calculate the U.S.-controlled content, refer to Supplement No. 2 to part 734 of the EAR. Note that certain rules issued by the Office of Foreign Assets Control, certain exports from abroad by U.S.-owned or controlled entities may be prohibited notwithstanding the *de*



*minimis* provisions of the EAR. In addition, the *de minimis* exclusions from the parts and components rule do not relieve U.S. persons of the obligation to refrain from supporting the proliferation of weapons of mass-destruction and missiles as provided in General Prohibition Seven (U.S. Person Proliferation Activity) described in §736.2(b)(7) of the EAR. Note that encryption items controlled for EI reasons under ECCN 5A002 or ECCN 5D002 on the Commerce Control List (refer to Supplement No.1 to Part 774 of the EAR) shall be subject to the EAR even if they incorporate less than the *de minimis* level of U.S. content. Accordingly, the provisions of the EAR concerning *de minimis* levels are not applicable to encryption items controlled for AEI@ reasons under ECCN 5A002, ECCN 5D002, or ECCN 5E002.

***(f) Step 11: Foreign-produced direct product***

The following considerations are appropriate for items abroad and are the same considerations necessary to determine whether a foreign-produced direct product is subject to the EAR under Step 6 in §732.2(f) of this part.

(1) If your foreign-produced item is described in an entry on the CCL and the Country Chart requires a license to your export or reexport destination for national security reasons, you must determine whether your item is subject to General Prohibition Three (Foreign-Produced Direct Product Reexports) (§736.2(b)(3) of the EAR). Your item is subject to this general prohibition if your transaction meets each of the following conditions:

(i) *Country scope of prohibition.* Your export or reexport destination for the direct product is Cuba, Libya, North Korea, or a destination in Country Group D:1 (see Supplement No. 1 to part 740 of the EAR) (reexports of foreign-produced direct products exported to other destinations are not subject to General Prohibition Three described in §736.2(b)(3) of the EAR);

(ii) *Scope of technology or software used to create direct products subject to the prohibition.* Technology or software that was used to create the foreign-produced direct product, and such technology or software that was subject to the EAR and required a written assurance as a supporting document for a license or as a precondition for the use of License Exception TSR in §740.6 of the EAR (reexports of foreign-produced direct products created with other technology and software are not subject to General Prohibition Three); and

(iii) *Scope of direct products subject to the prohibition.* The foreign-produced direct products are controlled for national security reasons indicated in an ECCN on the CCL (reexports of foreign-produced direct products not subject to national security controls are not subject to General Prohibition Three).

**(2) License Exceptions.** Each License Exception described in part 740 of the EAR overcomes General Prohibition Three (Foreign-Produced Direct Product Reexports) if all terms and conditions of a given License Exception are met by the exporter or reexporter.

***(g) Step 12: Persons denied export privileges***

(1) Determine whether your transferee, ultimate end-user, any intermediate consignee, or any other party to a transaction is a person denied export privileges. (See part 764 of the EAR). While it is not a violation of General Prohibition Four (Denial Orders) (§736.2(b)(4) of the EAR) to fail to check the Denied Persons List prior to a transfer, it is nonetheless a violation of the EAR to engage in any activity that violates the terms or conditions of a denial order. General Prohibition Four (Denial Orders) applies to all items subject to the EAR, i.e. both items on the CCL and within EAR99.

(2) There are no License Exceptions to General Prohibition Four (Denial Orders). The



prohibition concerning persons denied export privileges may be overcome only by a specific authorization from BXA, something that is rarely granted.

***(h) Step 13: Prohibited end-uses and end-users***

(1) Review the end-uses and end-users prohibited under General Prohibition Five (End-Use End-User) (§736.2(b)(5) of the EAR) described in part 744 of the EAR. Part 744 of the EAR contains all the end-use and end-user license requirements, and those are in addition to the license requirements under General Prohibitions One (Exports and Reexports), Two (Parts and Components Reexports), and Three (Foreign-produced Direct Product Reexports). Unless otherwise indicated, the license requirements of General Prohibition Five (End-Use End-User) described in part 744 of the EAR apply to all items subject to the EAR, i.e. both items on the CCL and within EAR99. Moreover, the requirements of General Prohibition Five (End-Use and End-User) are in addition to various end-use and end-user limitations placed on certain License Exceptions.

(2) Under License Exception TUS (§740.13 of the EAR), operational technology and software (OTS), sales technology (STS), and software updates (SUD) overcome General Prohibition Five (End-Use and End-User) (§736.2(b)(5) of the EAR) if all terms and conditions of these provisions are met by the exporter or reexporter.

***(i) Step 14: Embargoed countries and special destinations***

If your destination for any item is Bosnia-Herzegovina, Croatia, Cuba, Iran, Iraq, Libya, North Korea, Rwanda, or Serbia and Montenegro, you must consider the requirements of part 746 of the EAR. Unless otherwise indicated, General Prohibition Six (Embargo) applies to all items subject to the EAR, i.e. both items on the CCL and within EAR99. You may not make an export or reexport contrary to the

provisions of part 746 of the EAR without a license unless:

(1) You are exporting or reexporting only publicly available technology or software or other items outside the scope of the EAR, or

(2) You qualify for a License Exception referenced in part 746 of the EAR concerning embargoed destinations. You may not use a License Exception described in part 740 of the EAR to overcome General Prohibition Six (Embargo) (§736.2(b)(6) of the EAR) unless it is specifically authorized in part 746 of the EAR. Note that part 754 of the EAR concerning short supply controls is self-contained and is the only location in the EAR for both the prohibitions and exceptions applicable to short supply controls.

***(j) Step 15: Proliferation activity of U.S. persons unrelated to exports and reexports***

(1) Review the scope of activity prohibited by General Prohibition Seven (U.S. Person Proliferation Activity) (§736.2(b)(7) of the EAR) as that activity is described in §744.6 of the EAR. Keep in mind that such activity is not limited to exports and reexports and is not limited to items subject to General Prohibition One (Exports and Reexports), Two (Parts and Components Reexports), and Three (Foreign-Produced Direct Product Reexports). Moreover, such activity extends to services and dealing in wholly foreign-origin items in support of the specified proliferation activity and is not limited to items listed on the CCL or included in EAR99.

(2) Review the definition of U.S. Person in part 744 of the EAR.

***(k) Step 16: In-transit***

Shippers and operators of vessels or aircraft should review General Prohibition Eight (In-Transit) to determine the countries in which you may not unload or ship certain items in-transit. General Prohibition Eight applies to all items



subject to the EAR, i.e. both items on the CCL and within EAR99.

***(l) Step 17: Review orders, terms, and conditions***

Review the orders, terms, and conditions applicable to your transaction. General Prohibition Nine (Orders, Terms, and Conditions) prohibits the violation of any orders, terms, and conditions imposed under the EAR. Terms and conditions are frequently contained in licenses. In addition, the ten general prohibitions (part 736 of the EAR) and the License Exceptions (part 740 of the EAR) impose terms and conditions or limitations on your proposed transactions and use of License Exceptions. A given license or License Exception may not be used unless each relevant term or condition is met.

***(m) Step 18: Review the “Know Your Customer” Guidance and General Prohibition Ten (Knowledge Violation to Occur)***

License requirements under the EAR are determined solely by the classification, end-use, end-user, ultimate destination, and conduct of U.S. persons. Supplement No. 1 to part 732 of the EAR is intended to provide helpful guidance regarding the process for the evaluation of information about customers, end-uses, and end-users. General Prohibition Ten (Knowledge Violation to Occur) prohibits anyone from proceeding with a transaction with knowledge that a violation of the EAR has occurred or is about to occur. It also prohibits related shipping, financing, and other services. General Prohibition Ten applies to all items subject to the EAR, i.e. both items on the CCL and within EAR99.

***(n) Step 19: Complete the review of the general prohibitions***

After completion of Steps described in this section and review of all ten general prohibitions in part 736 of the EAR, including cross-

referenced regulations in the EAR, you will know which, if any, of the ten general prohibitions of the EAR apply to you and your contemplated transaction or activity.

(1) If none of the ten general prohibitions is applicable to your export from the United States, no license from BXA is required, you do not need to qualify for a License Exception under part 740 of the EAR. You should skip the Steps in §732.4 of this part regarding License Exceptions and proceed directly to the Steps in §732.5 of this part regarding recordkeeping, clearing the U.S. Customs Service with the appropriate Shipper’s Export Declaration, and using the required Destination Control Statement.

(2) If none of the ten general prohibitions is applicable to your reexport or export from abroad, no license is required and you should skip all remaining Steps.

(3) If one or more of the ten general prohibitions are applicable, continue with the remaining steps.

**§732.4**

**Steps regarding License Exceptions**

***(a) Introduction to Steps for License Exceptions***

If your export or reexport is subject to the EAR and is subject to General Prohibitions One (Exports and Reexports), Two (Parts and Components Reexports), or Three (Foreign-Produced Direct Product Reexports), consider the steps listed in paragraph (b) of this section. If your export or reexport is subject to General Prohibitions Four (Denial Orders), Seven (U.S. Person Proliferation Activity), Eight (In-Transit), Nine (Orders, Terms, and Conditions), or Ten (Knowledge Violation to Occur), there are no License Exceptions available for your export or reexport. If your export is subject to General Prohibition Five (End-Use End-User), consult part 744 of the EAR. If your export or reexport



is subject to General Prohibition Six (Embargo), consult part 746 of the EAR for applicable License Exceptions.

*(b) Steps for License Exceptions*

**(1) Step 20: Applicability of General Prohibitions.** Determine whether any one or more of the general prohibitions described in §736.2(b) of the EAR apply to your export or reexport. If no general prohibition applies to your export or reexport, then you may proceed with your export or reexport and need not review part 740 of the EAR regarding License Exceptions. You are reminded of your recordkeeping obligations related to the clearance of the U.S. Customs Service provided in parts 762 and 758 of the EAR.

**(2) Step 21: Applicability of restrictions on all License Exceptions.** Determine whether any one or more of the restrictions in §740.2 of the EAR applies to your export or reexport. If any one or more of these restrictions apply, there are no License Exceptions available to you, and you must either obtain a license or refrain from the export or reexport.

**(3) Step 22: Terms and conditions of the License Exceptions.**

(i) If none of the restrictions in §740.2 of the EAR applies, then review each of the License Exceptions to determine whether any one of them authorizes your export or reexport. Eligibility for License Exceptions is based on the item, the country of ultimate destination, the end-use, and the end-user, along with any special conditions imposed within a specific License Exception.

(ii) You may meet the conditions for more than one License Exception. Moreover, although you may not qualify for some License Exceptions you may qualify for others. Review the broadest License Exceptions first, and use any License Exception available to you. You are not required to use the most restrictive applicable License

Exception. If you fail to qualify for the License Exception that you first consider, you may consider any other License Exception until you have determined that no License Exception is available.

(iii) License Exceptions TMP, RPL, BAG, AVS, GOV, and TSU authorize exports notwithstanding the provisions of the CCL. List-based License Exceptions (LVS, GBS, CIV, TSR, and CTP) are available only to the extent specified on the CCL. Part 740 of the EAR provides authorization for reexports only to the extent each License Exception expressly authorizes reexports. License Exception APR authorizes reexports only.

- (iv) If you are exporting under License Exceptions GBS, CIV, LVS, CTP, TSR, or GOV, you should review §743.1 of the EAR to determine the applicability of certain reporting requirements.

**(4) Step 23: Scope of License Exceptions.** Some License Exceptions are limited by country or by type of item.

(i) Countries are arranged in country groups for ease of reference. For a listing of country groups, please refer to Supplement No. 1 to part 740 of the EAR. Unless otherwise indicated in a License Exception, License Exceptions do not apply to any exports or reexports to embargoed destinations. If your export or reexport is subject to General Prohibition Six (Embargo) for embargoed destinations, License Exceptions are only available to the extent specifically provided in part 746 of the EAR concerning embargoed destinations.

(ii) Special commodity controls apply to short supply items. No License Exceptions described in part 740 of the EAR may be used for items listed on the CCL as controlled for Short Supply reasons. License Exceptions for short supply items are found in part 754 of the EAR.



**(5) Step 24: Compliance with all terms and conditions.** If a License Exception is available, you may proceed with your export or reexport. However, you must meet all the terms and conditions required by the License Exception that you determined authorized your export or reexport. You must also consult part 758 and 762 of the EAR to determine your recordkeeping and documentation requirements.

**(6) Step 25: License requirements.** If no License Exception is available, then you must either obtain a license before proceeding with your export or reexport or you must refrain from the proposed export or reexport.

**(7) Step 29: License applications.** If you are going to file a license application with BXA, you should first review the requirements at part 748 of the EAR. Exporters, reexporters, and exporters from abroad should review the instructions concerning applications and required support documents prior to submitting an application for a license.

## **§732.5**

### **Steps regarding Shipper's Export Declaration, Destination Control Statements, record keeping, license applications, and other requirements.**

#### ***(a) Step 27: Shipper's Export Declaration***

You should review §758.3 of the EAR to determine what notations you must enter on the Shipper's Export Declaration (SED). These steps should be reviewed by exporters. Reexporters and firms exporting from abroad may skip Steps 27 through 29 and proceed directly to §732.6 of this part.

**(1) NLR.** The term "NLR" represents exports of listed items when no license is required. Such exports do not require that you qualify for a License Exception. The symbol "NLR" is required on the SED under two circumstances.

First, NLR is the correct symbol when exporting an item subject to the EAR not listed on the CCL. Such items are classified EAR99. Secondly, certain items are listed on the CCL but do not require a license to all destinations under General Prohibitions One (Exports and Reexports in the Form Received), Two (Parts and Components Reexports), or Three (Foreign-Produced Direct Product Reexports) (§736.2(b)(1), (b)(2), or (b)(3) of the EAR). Such items do not have an "X" in the appropriate cell on the Country Chart. If General Prohibitions Four through Ten (§736.2(b)(4) of the EAR) through (b)(10) of the EAR) also do not apply, you must clear exports of such items by entering the symbol "NLR" in the appropriate place on the SED.

**(2) License Exception symbol.** You must enter on any required SED the letter code (e.g., LVS, TMP) of the License Exceptions under which you are exporting. In the case of License Exceptions LVS, GBS, and CIV, the ECCN of the item being exported must also be entered when an SED is required. Please refer to §758.3 of the EAR for detailed information on use of SEDs.

**(3) License number.** If you are exporting under a license, enter the license number on these as required by §758.3 of the EAR

#### ***(b) Step 28: Destination Control Statement***

You are required to enter an appropriate Destination Control Statement (DCS) on commercial documents in accordance with the DCS requirements of §758.6 of the EAR. Exporters should review §758.6 of the EAR and use the DCS as required. Reexporters and exporters from abroad should review §752.6 for DCS requirements when using a Special Comprehensive License. Otherwise, DCS requirements do not apply to reexports and exports from abroad.



**(c) Step 29: Recordkeeping**

Records of transactions involving exports under any license or License Exception must be maintained in accordance with the recordkeeping requirements of part 762 of the EAR.

**§732.6**

**Steps for other requirements**

Sections 732.1 through 732.4 of this part are useful in determining the license requirements that apply to you. Other portions of the EAR impose other obligations and requirements. Some of them are:

(a) Requirements relating to the use of a license in §758.2 of the EAR.

(b) Obligations of carriers, forwarders, exporters and others to take specific steps and prepare and deliver certain documents to assure that items subject to the EAR are delivered to the destination to which they are licensed or authorized by a License Exception or some other provision of the regulations in §758.4 through §758.6 of the EAR.

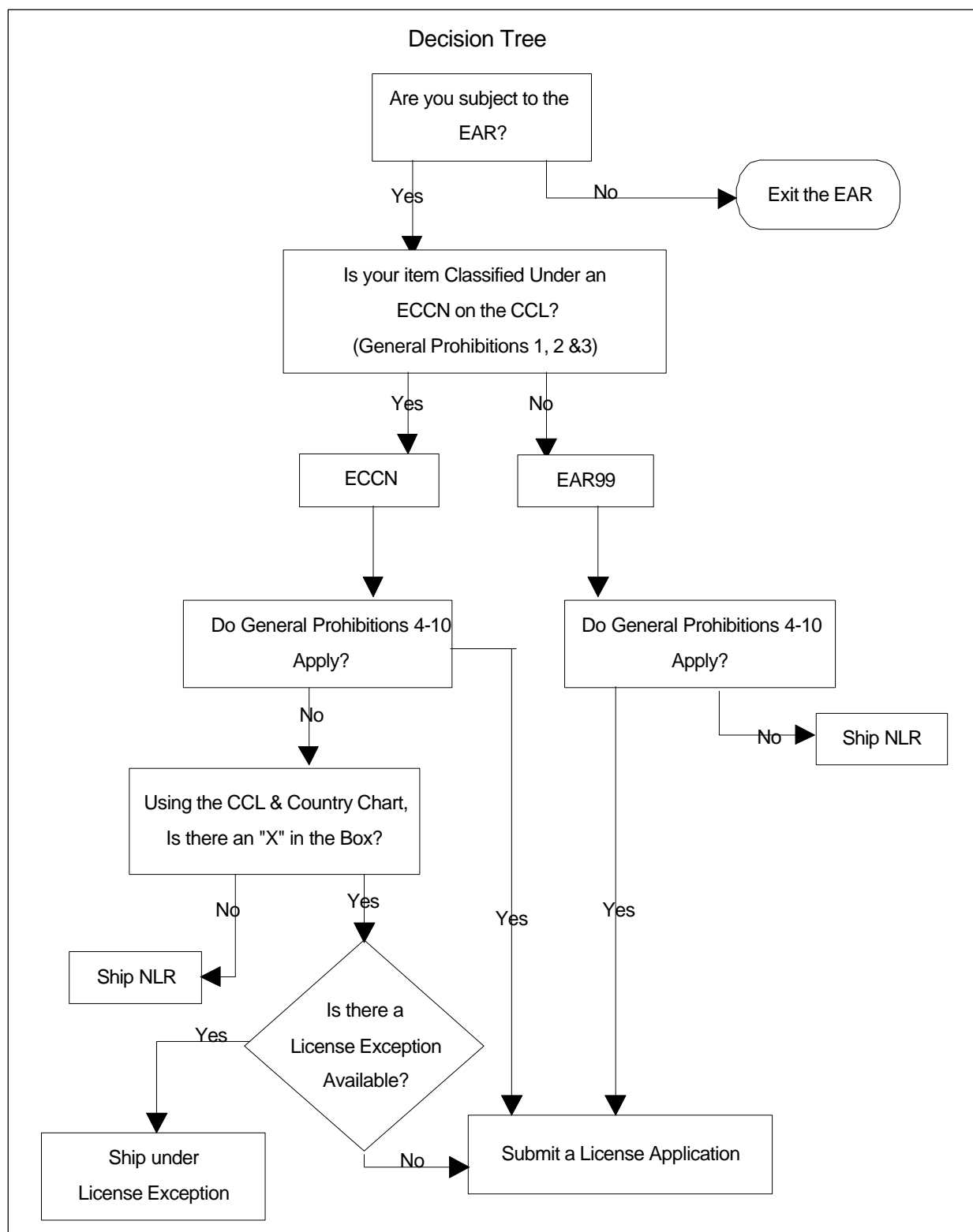
(c) Duty of carriers to return or unload shipments at the direction of U.S. Government officials (see §758.8 of the EAR).

(d) Specific obligations imposed on parties to Special Comprehensive licenses in part 752 of the EAR.

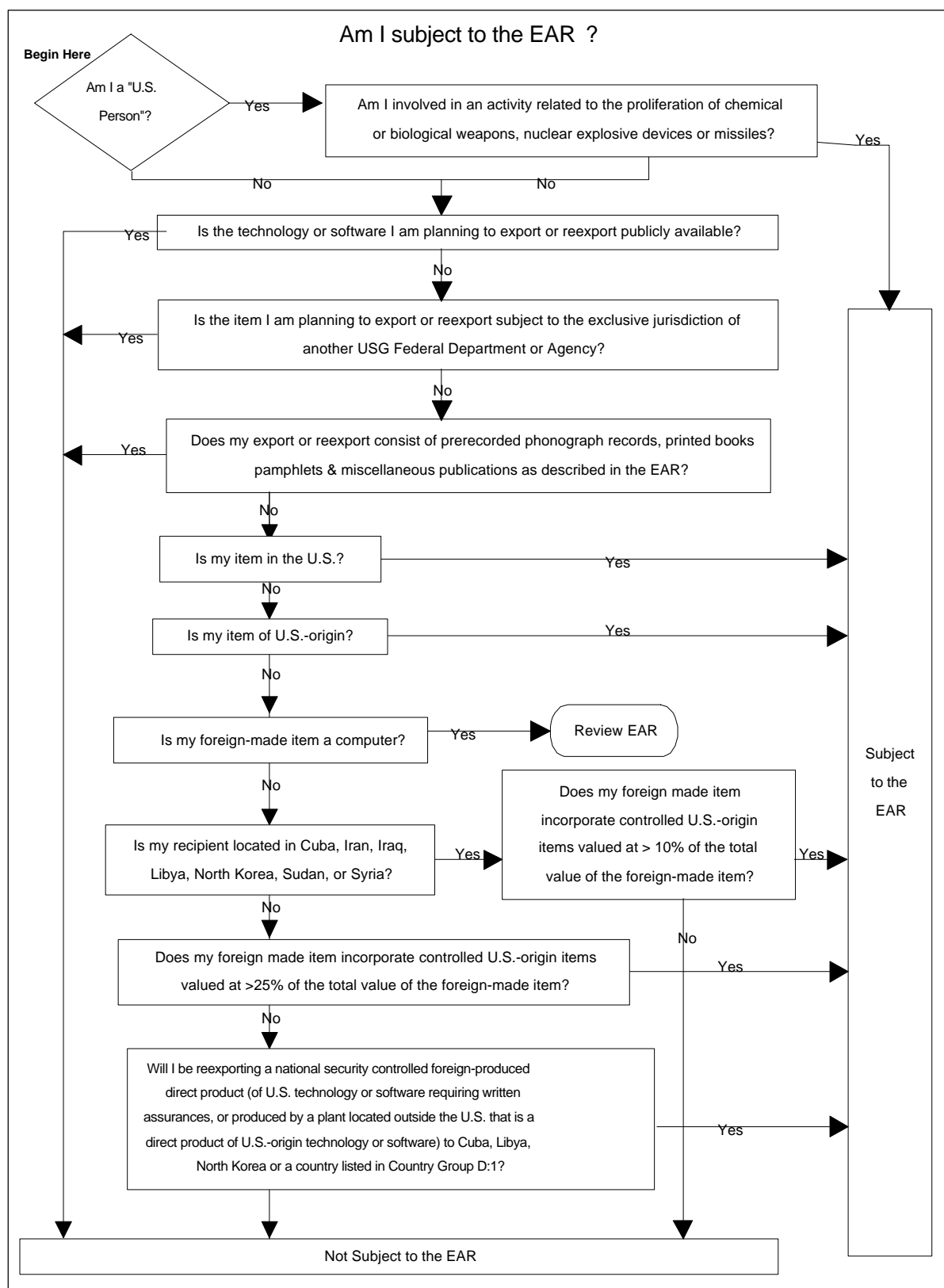
(e) Recordkeeping requirements imposed in part 762 of the EAR.

(f) Requirements of part 764 of the EAR to disclose facts that may come to your attention after you file a license application or make other statements to the government concerning a transaction or proposed transaction that is subject to the EAR.

(g) Certain obligations imposed by part 760 of the EAR on parties who receive requests to take actions related to foreign boycotts and prohibits certain actions relating to those boycotts.









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## BXA's "KNOW YOUR CUSTOMER" GUIDANCE AND RED FLAGS

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### "KNOW YOUR CUSTOMER" GUIDANCE

Various requirements of the EAR are dependent upon a person's knowledge of the end-use, end-user, ultimate destination, or other facts relating to a transaction or activity. These provisions include the nonproliferation-related "catch-all" sections and the prohibition against proceeding with a transaction with knowledge that a violation of the EAR has occurred or is about to occur.

(a) BXA provides the following guidance on how individuals and firms should act under this knowledge standard. This guidance does not change or interpret the EAR.

(1) *Decide whether there are "red flags".* Take into account any abnormal circumstances in a transaction that indicate that the export may be destined for an inappropriate end-use, end-user, or destination. Such circumstances are referred to as "red flags". Included among examples of red flags are orders for items that are inconsistent with the needs of the purchaser, a customer declining installation and testing when included in the sales price or when normally requested, or requests for equipment configurations that are incompatible with the stated destination (e.g., 120 volts in a country with 220 volts). Commerce has developed lists of such red flags that are not all-inclusive but are intended to illustrate the types of circumstances that should cause reasonable suspicion that a transaction will violate the EAR.

(2) *If there are "red flags", inquire.* If there are no "red flags" in the information that comes to your firm, you should be able to proceed with a transaction in reliance on information you have received. That is, absent "red flags" (or an express requirement in the EAR), there is no affirmative duty upon exporters to inquire, verify, or otherwise "go behind" the customer's representations. However, when "red flags" are

raised in information that comes to your firm, you have a duty to check out the suspicious circumstances and inquire about the end-use, end-user, or ultimate country of destination. The duty to check out "red flags" is not confined to the use of License Exceptions affected by the "know" or "reason to know" language in the EAR. Applicants for licenses are required by part 748 of the EAR to obtain documentary evidence concerning the transaction, and misrepresentation or concealment of material facts is prohibited, both in the licensing process and in all export control documents. You can rely upon representations from your customer and repeat them in the documents you file unless red flags oblige you to take verification steps.

(3) *Do not self-blind.* Do not cut off the flow of information that comes to your firm in the normal course of business. For example, do not instruct the sales force to tell potential customers to refrain from discussing the actual end-use, end-user, and ultimate country of destination for the product your firm is seeking to sell. Do not put on blinders that prevent the learning of relevant information. An affirmative policy of steps to avoid "bad" information would not insulate a company from liability, and it would usually be considered an aggravating factor in an enforcement proceeding.

(4) *Employees need to know how to handle "red flags".* Knowledge possessed by an employee of a company can be imputed to a firm so as to make it liable for a violation. This makes it important for firms to establish clear policies and effective compliance procedures to ensure that such knowledge about transactions can be evaluated by responsible senior officials. Failure to do so could be regarded as a form of self-blinding.

(5) *Reevaluate all the information after the inquiry.* The purpose of this inquiry and reevaluation is to determine whether the "red



flags” can be explained or justified. If they can, you may proceed with the transaction. If the “red flags” cannot be explained or justified and you proceed, you run the risk of having had “knowledge” that would make your action a violation of the EAR.

(6) *Refrain from the transaction or advise BXA and wait.* If you continue to have reasons for concern after your inquiry, then you should either refrain from the transaction or submit all the relevant information to BXA in the form of an application for a license or in such other form as BXA may specify.

**(b)** Industry has an important role to play in preventing exports and reexports contrary to the national security and foreign policy interests of the United States. BXA will continue to work in partnership with industry to make this front line of defense effective, while minimizing the regulatory burden on exporters. If you have any question about whether you have encountered a “red flag”, you may contact the Office of Export Enforcement at 1-800-424-2980 or the Office of Exporter Services at (202)482-4532.

## RED FLAGS

Possible indicators that an unlawful diversion might be planned by your customer include the following:

1. The customer or purchasing agent is reluctant to offer information about the end-use of a product.
2. The product’s capabilities do not fit the buyer’s line of business; for example, a small bakery places an order for several sophisticated lasers.
3. The product ordered is incompatible with the technical level of the country to which the product is being shipped. For example, semiconductor manufacturing equipment

would be of little use in a country without an electronics industry.

4. The customer has little or no business background.
5. The customer is willing to pay cash for a very expensive item when the terms of the sale call for financing.
6. The customer is unfamiliar with the product’s performance characteristics but still wants the product.
7. Routine installation, training or maintenance services are declined by the customer.
8. Delivery dates are vague, or deliveries are planned for out-of-the-way destinations.
9. A freight forwarding firm is listed as the product’s final destination.
10. The shipping route is abnormal for the product and destination.
11. Packaging is inconsistent with the stated method of shipment or destination.
12. When questioned, the buyer is evasive or unclear about whether the purchased product is for domestic use, export or reexport.

